

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

VANDERBILT MORTGAGE AND	)	CIVIL ACTION
FINANCE, INC.,	)	
PLAINTIFF,	)	CA-C-09-312
	)	
VS.	)	
	)	CORPUS CHRISTI, TEXAS
CESAR FLORES, ET AL,	)	NOVEMBER 15, 2010
DEFENDANTS,	)	8:29 A.M.
	)	
AND	)	
	)	
ARTURO TREVINO,	)	
INTERVENOR/PLAINTIFF,	)	
	)	
VS.	)	
	)	
CLAYTON HOMES, INC., ET AL,	)	
INTERVENOR/DEFENDANT.	)	
	)	
.....	)	

TRANSCRIPT OF TRIAL - DAY 4  
BEFORE THE HONORABLE JANIS GRAHAM JACK, JUDGE, with a jury  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT

THE PLAINTIFFS:	MR. JORGE C. RANGEL
	THE RANGEL LAW FIRM
	615 N. UPPER BROADWAY, STE 2020
	CORPUS CHRISTI, TEXAS 78403

(APPEARANCES CONTINUED ON PAGE 2)

THE COURT RECORDER:	MS. VELMA GANO
---------------------	----------------

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING  
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE: GARCIA  
SERVICES, P.O. BOX 351, ROCKPORT, TEXAS 78381, 361-463-9790

APPEARANCES FOR:

THE PLAINTIFFS:

MS. CRISTINA E. RODRIGUEZ  
BAKER BOTTS  
910 LOUISIANA, STE 3624  
HOUSTON, TEXAS 77002

MR. PATTON G. LOCHRIDGE  
MR. CARLOS R. SOLTERO  
MCGINNIS, LOCHRIDGE & KILGORE  
600 CONGRESS AVENUE, STE 2100  
AUSTIN, TEXAS 78701

MR. EDWARD S. SLEDGE, IV  
MR. THOMAS W. THAGARD, III  
MAYNARD, COOPER & GALE  
1901 SIXTH AVENUE NORTH  
SUITE 2400  
BIRMINGHAM, ALABAMA 35203

THE DEFENDANTS:

MR. BALDEMAR F. GUTIERREZ  
MR. J. JAVIER GUTIERREZ  
THE GUTIERREZ LAW FIRM  
700 E. THIRD STREET  
ALICE, TEXAS 78332

MR. DAVID L. RUMLEY  
MR. JEFF WIGINTON  
WIGINTON RUMLEY  
800 N. SHORELINE BOULEVARD  
14<sup>TH</sup> FLOOR, SOUTH TOWER  
CORPUS CHRISTI, TEXAS 78401

1 (The proceedings began at 8:29 a.m., continued from  
2 11-12-10)

3 THE COURT: Anything to take up?

4 MR. RANGEL: A couple of matters, Your Honor. May  
5 we approach the podium?

6 THE COURT: Please.

7 MR. RANGEL: Judge, there is a motion in limine that  
8 has been filed by Mr. Rumley and Mr. Gutierrez with respect  
9 to Mr. Flores' failure to file income tax returns for '06,  
10 '07 and '08, and I wanted to get into that -- I believe  
11 Mr. Flores is going to be testifying this morning -- under  
12 608B and under the authority of the Bustamante case, 45 F3d  
13 933 out of the Fifth Circuit. It's clearly relevant to  
14 credibility. And they are going forward with their case in  
15 chief this morning and I think that's something that clearly  
16 it is entitled to.

17 THE COURT: Mr. Gutierrez?

18 MR. B. GUTIERREZ: Of course, we were not given any  
19 notice that there would be some form of impeachment  
20 concerning the failure to file an income tax return, and --

21 THE COURT: What kind of notice were you expecting?

22 MR. B. GUTIERREZ: Well, I think it goes to, I think  
23 they are trying to either identify him or try to portray him  
24 as someone that has violated the law in front of the jury.

25 THE COURT: Well, has he made any income through

1 those years?

2 MR. B. GUTIERREZ: I don't know he's made any  
3 income, Your Honor.

4 MR. RANGEL: We will lay the predicate for that  
5 before, obviously, Judge.

6 THE COURT: Okay.

7 MR. B. GUTIERREZ: And we also object under 404B,  
8 Your Honor, I mean --

9 THE COURT: Okay, what does it have to do with the  
10 case, though?

11 MR. RANGEL: It goes to credibility, Your Honor.  
12 And we served discovery responses where, requests for  
13 admissions where he admitted with respect to the years '06,  
14 '07 and '08 that he failed to file income tax returns. And  
15 they filed a motion in limine with respect to that weeks ago  
16 and, filed during pretrial, so they were on notice that we  
17 may try to use that. Of course, we wouldn't bring it up  
18 without first raising it with the Court due to the motion in  
19 limine. But it goes to credibility, like I said. The  
20 Bustamante case is right on point. It goes to Mr. Flores'  
21 character and truthfulness.

22 MR. B. GUTIERREZ: Your Honor, he, Mr. Rangel had an  
23 opportunity on his case --

24 THE COURT: I'm sorry, why does that go, why is that  
25 a credibility issue? Explain it to me.

1 MR. RANGEL: Well, because failure, under Bustamante  
2 the failure to file income tax returns is the type of conduct  
3 that goes to character and truthfulness.

4 MR. B. GUTIERREZ: But he has admitted, you know, if  
5 he was asked in requests for admissions, he has admitted that  
6 he didn't file it. You know, he wants to impeach him on  
7 something that he has admitted in written discovery that was  
8 sent to Mr. Flores. And I think the only reason they want to  
9 bring it up is to basically prejudice his claim against  
10 Vanderbilt, his claim being that the repossession that they  
11 are attempting is illegal, wrongful, and that the releases  
12 were filed. I mean he has admitted that he paid on the  
13 contract, he has admitted he didn't pay the entire contract,  
14 he has admitted that he didn't file any income taxes. I  
15 don't, I really don't understand how that can go to  
16 credibility. He has made those admissions, Your Honor.

17 MR. RANGEL: He has made those admissions in  
18 discovery but the jury does not know that he has made those  
19 admissions and that's all we're trying to do. I mean we're  
20 not going to belabor the point, we just, I'm just going to  
21 ask him, You did not file income tax returns for '06, '07 and  
22 '08, because those are specific requests for admission that  
23 he has admitted.

24 MR. B. GUTIERREZ: This is not a case where we are  
25 in tax court where they are trying to show that he has

1 violated the Tax Code in any way. He has made admissions in  
2 his, in written discovery that was sent to him. Any evidence  
3 that --

4 THE COURT: Why don't we go ahead, let me read  
5 Bustamante while we are discussing this. You will have time.  
6 Okay?

7 MR. RANGEL: Very well, Your Honor, and I won't go  
8 into it. And may we go to the other point, Your Honor?

9 THE COURT: Yes.

10 MR. RANGEL: Okay. Judge, today is going to move  
11 very quickly.

12 THE COURT: Yes.

13 MR. RANGEL: We have been working with counsel in  
14 terms of witnesses and so --

15 THE COURT: I'm excited.

16 MR. RANGEL: The parties are going to be resting and  
17 we are going to have motions. And they are prepared. We're  
18 going to have motions procedurally that we need to file after  
19 each stage.

20 THE COURT: I understand that.

21 MR. RANGEL: And, obviously --

22 THE COURT: And I will call you up here and you can  
23 tell me the substance and then tell me that. Whenever you  
24 file them I will consider them filed at that moment.

25 MR. RANGEL: Okay, so --

1 THE COURT: Is that all right?

2 MR. RANGEL: Right. Just so long as the Court is  
3 okay with us proceeding that way.

4 THE COURT: Absolutely.

5 MR. RANGEL: And just to protect the record. And  
6 Mr. Soltero --

7 THE COURT: The record is all important.

8 MR. RANGEL: Mr. Soltero will be arguing those  
9 motions and he requested I tell Your Honor.

10 THE COURT: Thank you.

11 MR. RANGEL: And that's all we have for the Court.

12 THE COURT: Thank you.

13 MR. LOCHRIDGE: We've got one matter of exhibits to  
14 speed things along, Your Honor.

15 MR. B. GUTIERREZ: Excuse me, Your Honor. Could I  
16 have a copy of the Bustamante case, because I take it that --

17 THE COURT: It wasn't provided to me either, which I  
18 would have --

19 MR. RANGEL: I have it, Your Honor.

20 THE COURT: No, what you need to -- I don't take  
21 Xeroxes of cases.

22 MR. RANGEL: I know, I --

23 THE COURT: I find it very offensive, sorry.

24 MR. RANGEL: That's why I didn't provide it to the  
25 Court.

1 THE COURT: But you should have filed a motion  
2 citing it.

3 MR. SOLTERO: We did, Your Honor.

4 MR. RANGEL: We did.

5 MR. SOLTERO: I believe it's in our motion in  
6 limine.

7 MR. RANGEL: It's in response --

8 THE COURT: It is in the motion in limine and I read  
9 the Bustamante case and I think you're right. Now I  
10 remember. It's all coming back.

11 MR. SOLTERO: It's in our response to the motion --

12 THE COURT: It was a week and a half ago.

13 MR. B. GUTIERREZ: Could I have a --

14 THE COURT: But you need to lay the predicate,  
15 Mr. Rangel.

16 MR. RANGEL: I understand that, Your Honor. I  
17 understand that.

18 THE COURT: And, further, I'm still sick so I'm  
19 cranky. Sorry.

20 MR. LOCHRIDGE: Your Honor, we have got some  
21 agreements on exhibits.

22 THE COURT: Okay.

23 MR. LOCHRIDGE: To try to move things along, and  
24 I'll just read them, on the Clayton parties.

25 (Off the record discussion at counsel table)



1 THE COURT: Go ahead.

2 MR. LOCHRIDGE: We have agreed to the admission of  
3 Exhibits 4 --

4 THE COURT: These are Clayton exhibits?

5 MR. LOCHRIDGE: Yes, yes.

6 THE COURT: Go ahead.

7 MR. LOCHRIDGE: 4, 5, 42, 139, 140, 141, 143 --

8 THE COURT: I'm sorry, 141 and 143?

9 MR. LOCHRIDGE: Yes, Your Honor.

10 THE COURT: Or 43? 143?

11 MR. LOCHRIDGE: 143.

12 THE COURT: Thank you, sir.

13 MR. LOCHRIDGE: 169, 176, 241, 242, which is a  
14 revised one that they --

15 THE COURT: What were the years of -- sorry --  
16 Mr. Flores, wasn't he in the Bureau of Prisons in '07?

17 MR. RANGEL: That was Mr. Trevino.

18 THE COURT: Oh, sorry.

19 MR. RANGEL: And he --

20 THE COURT: Moving right along. Thank you.

21 MR. RANGEL: He failed to file income tax returns,  
22 but that's the reason I am not urging that with respect to  
23 him.

24 THE COURT: Okay, thank you. Okay, I got 242 is the  
25 last one?

1 MR. LOCHRIDGE: Yes, Your Honor.

2 THE COURT: Is that it?

3 MR. LOCHRIDGE: And I believe that's it.

4 THE COURT: Thank you very much.

5 MR. LOCHRIDGE: And --

6 THE COURT: Those are admitted. Wait a minute.

7 Clayton's 4, 5, 42, 139, 140, 141, 143, 169, 176, 241 and 242  
8 are admitted.

9 (Plaintiff's Exhibits 4, 5, 42, 139, 140, 141, 143, 169,  
10 176, 241 and 242 admitted into evidence)

11 THE COURT: And then?

12 MR. LOCHRIDGE: I left, I'm sorry, I left one out,  
13 Your Honor.

14 THE COURT: Okay.

15 MR. LOCHRIDGE: That's 194? It's 96.

16 MR. RUMLEY: Whatever, we, that one is --

17 MR. LOCHRIDGE: With certain redactions that we  
18 would revisit.

19 MR. RUMLEY: Okay, as long as it's redacted.

20 MR. LOCHRIDGE: It is. It is. It's, let me  
21 explain.

22 MR. RUMLEY: Suit affecting parent/child  
23 relationship.

24 MR. LOCHRIDGE: No, no.

25 MR. RUMLEY: Right.

1 MR. LOCHRIDGE: No, I'm sorry. It's 96 for all the  
2 exhibits, the exemplars. And 96, we have reached an  
3 agreement, that had some plea agreements and we have redacted  
4 that so it's nothing more than a signature, and we've spoken  
5 with the expert, which he will refer to that as a court  
6 record.

7 THE COURT: Well, show it to Mr. Rumley right now.  
8 Have you got it?

9 MR. LOCHRIDGE: We have done that and I think, he  
10 can speak for himself, I think he's in agreement.

11 MR. RUMLEY: I'm in agreement, Your Honor.

12 THE COURT: 96 is admitted.

13 (Plaintiff's Exhibit 96 admitted into evidence)

14 MR. LOCHRIDGE: And then we go to Exhibit -- that's  
15 it.

16 MR. RUMLEY: And then, Your Honor, for Flores/King/  
17 Trevino, Defendant's Exhibit 491, which is, it's already been  
18 admitted but we have identified it as a separate exhibit so  
19 you don't have a bunch of sub-groups, which is a CV of Janet  
20 Masson.

21 THE COURT: I'm sorry, say that again, the number?

22 MR. RUMLEY: Number 491.

23 THE COURT: 491, admitted.

24 (Defendant's Exhibit 491 admitted into evidence)

25 MR. RUMLEY: CV of Masson. And then --

1 THE COURT: Wouldn't -- okay, go ahead.

2 MR. RUMLEY: Defendant's Exhibits 487, 488, 489 and  
3 490, which are already in evidence but we --

4 THE COURT: Admitted.

5 (Defendant's Exhibits 487, 488, 489 and 490 admitted  
6 into evidence)

7 MR. RUMLEY: Thank you.

8 MR. B. GUTIERREZ: Your Honor --

9 MR. LOCHRIDGE: I'm sorry. One last exhibit. And  
10 I'm sorry to piecemeal, I thought I had a good list. 287,  
11 which is the CV for Mr. Stewart.

12 MR. RUMLEY: No objection.

13 THE COURT: I'm sorry, say that again?

14 MR. LOCHRIDGE: 287.

15 THE COURT: 287 is admitted.

16 (Plaintiff's Exhibit 287 admitted into evidence)

17 MR. B. GUTIERREZ: Your Honor, and we have these  
18 exhibits concerning the depositions that were played on  
19 Friday, Your Honor.

20 THE COURT: Say that again?

21 MR. B. GUTIERREZ: These are the exhibits that were  
22 displayed and used with the testimony of the witnesses that  
23 testified on Friday.

24 THE COURT: Any objection, Mr. Lochridge?

25 MR. LOCHRIDGE: I think Mr. Soltero bird-dogged that

1 one, Your Honor.

2 THE COURT: Okay. Mr. Soltero?

3 MR. SOLTERO: As long as they weren't sustained at  
4 the time, we don't object.

5 THE COURT: The ones I sustained were the ones that  
6 were put together.

7 MR. SOLTERO: Right.

8 MR. B. GUTIERREZ: The only ones that were sustained  
9 were the demonstratives, which are not supposed to be --

10 THE COURT: So what are the numbers on those? I'll  
11 start writing them down.

12 MR. B. GUTIERREZ: 95.

13 MR. SOLTERO: Can we do that for the next one?

14 MR. B. GUTIERREZ: You can just view them.

15 THE COURT: Well, hand them to him as you, you tell  
16 me the numbers and hand them to Mr. Soltero.

17 MR. B. GUTIERREZ: 95, Your Honor, Exhibit 95.

18 THE COURT: Keep going.

19 MR. B. GUTIERREZ: Exhibit 96, Exhibit 97, Exhibit  
20 462, Exhibit 98, Exhibit 99, Exhibit 101, Exhibit 102,  
21 Exhibit 114, Exhibit 230- --

22 THE COURT: Hand them to him. What was the last  
23 one?

24 MR. B. GUTIERREZ: Exhibit 232, Your Honor.

25 THE COURT: Okay.

1 MR. B. GUTIERREZ: Exhibit 225, Exhibit 226, Exhibit  
2 227, Exhibit 230, Exhibit 231, Exhibit 233, Exhibit 234,  
3 Exhibit 466, Your Honor.

4 THE COURT: Okay. Now, let's bring in the jury.  
5 And you can tell me, Mr. Soltero, during the course of these  
6 proceedings, since this is not your witness.

7 MR. SOLTERO: Okay. Yes, Your Honor.

8 THE COURT: I am still going to re-read Bustamante.

9 MR. RANGEL: And, Judge, we also cited to the Court  
10 Hatchett, 918 F2d 631-641. It's in Document 198, page 10 of  
11 15.

12 THE COURT: 918 F2d what?

13 MR. RANGEL: 918 F2d 631-641.

14 THE COURT: Thank you, got it.

15 (Jury enters at 8:43 a.m.)

16 THE COURT: Thank you. You may be seated.  
17 Mr. Gutierrez?

18 MR. B. GUTIERREZ: Yes, Your Honor.

19 THE COURT: Go ahead.

20 MR. B. GUTIERREZ: Cross-plaintiffs call Ms. Amber  
21 Krupacs by video deposition.

22 DEFENDANT'S PROFFER OF EVIDENCE

23 (Video deposition playing)

24 "AMBER KRUPACS, DEFENDANT'S WITNESS, SWORN"

25 EXAMINATION

1 BY MR. RUMLEY:

2 Q "Ma'am, can you identify yourself for us?

3 A "Amber Krupacs.

4 Q "Do you know whether or not there is any type of an  
5 unwritten policy in place with respect to how long you-all  
6 keep deeds of trust that are involved in a land in lieu  
7 transaction?

8 A "With an active account, an active account we retain the  
9 deed of trust for as long as the account is active.

10 Q "If a land in lieu transaction is part of a  
11 securitization and, for example, it's prepaid, that the loan  
12 was prepaid, how long is the deed of trust maintained within  
13 Vanderbilt?

14 A "When an account goes into inactive status it would  
15 depend on the reason, so if the customer had made all of  
16 their contractual payments then we would retain, we would  
17 take the deed of trust and we would release it, if they had  
18 made their contractual payments, we would release it and we  
19 would record that release at the relevant county, and upon  
20 receiving it back we would then send it to the customer and  
21 we would -- that's what we would do with it, we would send it  
22 to the customer.

23 Q "When a deed of trust is involved in a land in lieu  
24 transaction that has been securitized, is the, the original  
25 deed of trust, is that maintained, or is a copy of it, or how

1 does that work?

2 A "For a deed of trust, it could be a copy, could be a copy  
3 of the recorded deed that we would retain in the investor  
4 files. So we would have a copy or the original, depending on  
5 what that particular county returned.

6 Q "Okay. And so, contained within the investor file for  
7 that particular securitization, if we are talking about a  
8 land in lieu transaction, the deed of trust that would be  
9 maintained in an active status transaction would either be a  
10 copy or the original, correct?

11 A "Yes.

12 Q "All right. And then there is no policy in place with a,  
13 within any type of a time frame as to when that is destroyed  
14 or sent back after that account becomes inactive?

15 A "Well, when the account is paid in full and it's  
16 satisfied all of it, it's paid its contractual payments, when  
17 it's paid its contractual payments, again, we would send it  
18 to the county to release the deed.

19 Q "Release the deed of trust?

20 A "Yes. Upon payment of all the payments.

21 Q "Give us an idea of your background, your school, your  
22 work history and that sort of thing.

23 A "School, I went to Drexler University, Philadelphia. I  
24 started working with a public accounting firm after college.  
25 Then I came to Clayton Homes.



1 Q "Let me stop you there. Did you get a degree in  
2 accounting?

3 A "I did.

4 Q "Do you remember what year you graduated?

5 A "1987.

6 Q "And then after that did you attend any other education?

7 A "No.

8 Q "And then what year did you go to work for Clayton Homes?

9 A "1993.

10 Q "And what position did you start there with?

11 A "Tax manager.

12 Q "And how long were you tax manager?

13 A "I was tax manager through 2001.

14 Q "And then, how did your title change in 2001?

15 A "In 2001 I moved to Vanderbilt Mortgage and Finance as a  
16 vice-president.

17 Q "And do you remember when in 2001 you became vice-  
18 president?

19 A "It was approximately September.

20 Q "And has your position changed since then?

21 A "No.

22 Q "You are still vice-president at Vanderbilt?

23 A "Yes. I also became secretary when I came down in 2001.

24 Q "Have you been an officer of any of the other Clayton  
25 companies?

1 A "I have been an officer of Clayton Homes.

2 Q "When you say Clayton Homes --

3 A Inc.

4 Q -- that's Clayton Homes, Inc.?

5 A "Yes.

6 Q "And when were you an officer?

7 A "I was an officer there from approximately 1998 until  
8 present. And a secretary for a portion of the time. And I  
9 was vice-president from '98 through the present.

10 Q "Vice-president of Clayton Homes, Inc.?

11 A "Yes.

12 Q "Do you remember when you were secretary?

13 A "'98, but I'm not sure when it ended.

14 Q "Okay. Are you an officer of any other Clayton company?

15 A "Presently, no.

16 Q "Give us an idea of what your responsibilities are as  
17 being vice-president of Clayton Homes, Inc.

18 A "Clayton Homes, Inc., would be responsible for assisting  
19 with arranging financing for the company.

20 Q "And give us an idea of how you do that.

21 A "Today the financing is provided substantively by  
22 Berkshire, one of the Berkshire Hathaway subsidiaries.

23 Q "And before that time, before Berkshire was involved, how  
24 did they obtain their financing?

25 A "We would have financed the company through bank credit

1 lines, private placements, bank syndications, as well as a  
2 securitization program.

3 Q "Give us an idea of how the securitization program  
4 assisted with the financing of Clayton Homes, Inc. up until,  
5 I assume, the time that Berkshire acquired them, correct?

6 A "Were there a couple of questions there?

7 A "Well, I'm trying to define the time period. It's my  
8 understanding there's a difference, correct, between when  
9 Berkshire provided the financing and when the securitization  
10 provided the financing for Clayton Homes, Inc.? Is my  
11 understanding correct?

12 A "Up through -- the last securitization that we issued was  
13 2003-A. That was the last one we issued and then since we've  
14 been funded through Berkshire Hathaway.

15 Q "Give us an idea of how the securitization, up and  
16 through, say, from 1999 through 2003-A, how that would  
17 provide Clayton Homes, Inc. with financing.

18 A "A trust would be formed, a securitization trust would be  
19 formed. The assets of the trust would be approximately six  
20 to 10,000 Vanderbilt mortgages, loans and mortgages. The  
21 trust would create bonds and bond investors would invest in  
22 the bonds with the intention or with the intent of receiving  
23 their investment back through principal payments over time as  
24 well as earning an interest rate, a coupon on the bond that  
25 they were acquiring. Those proceeds that would be received

1 from the investors would then fund additional originations  
2 for Vanderbilt Mortgage.

3 Q "The assets that are contained in the trust would be  
4 things like manufactured home contracts, mortgages, that sort  
5 of thing, correct?

6 A "Correct.

7 Q "Do you have an understanding that back during the 2005  
8 time period that there were a number of releases that were  
9 filed releasing deeds of trust, mechanic's liens, in South  
10 Texas?

11 A "In general, I know we filed some.

12 Q "Can you explain to the jury what the pooling and  
13 servicing agreement is, generally?

14 A "The pooling and servicing agreement, in summary,  
15 outlines the provision of creating the securitization trust,  
16 of creating, the process of creating the bonds, of  
17 administering the bonds long-term, and the payment structure  
18 that has to be adhered to to pay the bonds, or return to the  
19 bondholders their original investment and the interest that  
20 they would earn on them, as -- it does many things. Those  
21 are just some of them, in summary, the high level things.

22 Q "Sure. How do you, how do you report, under your  
23 obligations, under the underwriting agreements and your  
24 obligations under the servicing and pooling agreements, the  
25 change, for example, if a land in lieu transaction was

1 originally sold as a land in lieu and since then the land has  
2 been released?

3 A "Under the pooling and servicing agreements they are  
4 silent as to that type of communication.

5 Q "When you have a situation of a land in lieu where a  
6 deed, land is actually put up as collateral, correct?

7 A "Yes.

8 Q "Do you communicate in any form or fashion if that land  
9 has been released to any of the investors?

10 A "I don't recall us doing that, no, but I don't also  
11 recall us being required to do that under the pooling and  
12 servicing agreement.

13 Q "Will you agree with me that if you have a loan that you  
14 are securitized and it is backed by real property versus just  
15 the home, that that is worth more to an investor than just  
16 simply a loan without the real estate as collateral?

17 A "In a Vanderbilt transaction it really would not be.  
18 Vanderbilt has always taken responsibility for each and every  
19 loan that is put into the securitized pool; therefore, if a  
20 loan ever defaults in a Vanderbilt transaction, Vanderbilt  
21 reacquires or repurchases that loan from the pool, so the  
22 investor, it really does not matter what it is because he is  
23 always going to get full principal. That would matter if you  
24 weren't going to get full principal for your loan, yes. But  
25 in this case, since in a Vanderbilt transaction they always

1 get full principal returned to them, it does not matter.

2 Q "From a very simplistic view, from kind of like the, I  
3 don't know if it's the chicken or the egg, but you have a  
4 consumer who presumably purchased a manufactured home, they  
5 obviously didn't pay cash so they took out a loan, and so  
6 money is owed to CMH, who is the seller of the home, and that  
7 person would obtain financing through Vanderbilt?

8 A "Or others, but --

9 Q "Or others. So in that scenario Vanderbilt would  
10 actually, based on a ledger entry, pay CMH Homes for the home  
11 and the customer would be indebted to Vanderbilt, is that --

12 A "Vanderbilt would pay what was needed on the transaction  
13 to -- it wouldn't necessarily -- Vanderbilt wouldn't  
14 necessarily be paying CMH for the home, because that would be  
15 Vanderbilt buying the home. So Vanderbilt is not paying CMH  
16 for the home. What they are doing is lending the money to  
17 the customer to buy a home.

18 Q "But they are not actually lending the money, they are  
19 having an installment contract where the customer is making  
20 monthly payments?

21 A "Well, they did lend the money to -- they lent the money  
22 to the customer. They did lend money to the customer to buy  
23 their home.

24 Q "What are the other risk factors?

25 MR. RANGEL: "In the document?

1 MR. RUMLEY: "Yes.

2 THE WITNESS: "It talks about partial prepayments,  
3 which we have already talked about, and prepayments resulting  
4 from refinancing by obligors. We mentioned that briefly. If  
5 a lot of customers are finding alternative lenders, then they  
6 are able to refinance, and those would show as payments in  
7 full. We talked about liquidations on defaulted contracts.  
8 Repurchase of contracts by the seller due to defective  
9 documentation or breaches of representation of warranties in  
10 the pooling and servicing agreement would affect it. And the  
11 optional purchase by the seller or servicer of all the  
12 contracts in connection with termination of the trust fund.

13 BY MR. RUMLEY:

14 Q "It says repurchases of contracts by the seller due to  
15 defective documentation or breaches of representation of  
16 warranties in the pooling and servicing agreement. What is  
17 that referring to?

18 A "That would usually happen towards the beginning of a  
19 securitization where it would be, you were expecting to get  
20 the recorded mortgage back and you didn't, so you can't  
21 supply the recorded mortgage in the time frame that's  
22 specified in the agreements. That would be one.

23 Q "What happens in a situation where you would learn that  
24 the underlying documents were forged or fraudulent? Is that  
25 a situation where the seller or Vanderbilt would come in and

1 repurchase that?

2 A "If it was beyond alleged, it was proven, Vanderbilt, I  
3 believe, would repurchase that.

4 Q "And how is that documented?

5 A "It would show up, again, on the investor report, the  
6 monthly, and it would be shown on the line that would talk  
7 about the prepayments in full, is the line it would have  
8 there, is where those proceeds go on all repurchases.

9 Q "Okay. How about within Vanderbilt, is there, do you --  
10 I would assume that you delineate out those versus the ones  
11 that have been prepaid or defaults?

12 A "I'm not sure I understand the question.

13 Q "How do you record within Vanderbilt which of those loans  
14 that were repurchased due to defective documents, forgery,  
15 fraud, something like that?

16 A "We would not have a designation in the system. The  
17 designation we would have, if we have a particular loan that  
18 is the subject of litigation, we do have a status code that  
19 we put on that particular loan. Other than that, there would  
20 be no other designation on it.

21 Q "Okay. And it would be reported to the investor just as  
22 a prepayment?

23 A "Yes, it would. On the monthly report. Because  
24 Vanderbilt would repurchase the loan, give them their  
25 principal back, or their investment, and so it would show up



1 there."

2 (Video stops)

3 MR. THAGARD: Your Honor, may we approach for a  
4 second?

5 THE COURT: Yes, sir.

6 (Bench conference on the record)

7 THE COURT: Does somebody have an expert witness  
8 sitting in the back?

9 MR. THAGARD: Sitting where?

10 THE COURT: Our security officer said that there's  
11 an expert witness sitting in the back.

12 MR. THAGARD: It's their expert?

13 MR. B. GUTIERREZ: It's Mr. Stewart I think is back  
14 there.

15 MR. THAGARD: Oh, okay.

16 THE COURT: Can you, is there any problem with that?  
17 I just, the CSO just always asks me if there are any other  
18 witnesses. Was he told (indiscernible)?

19 MR. B. GUTIERREZ: He was.

20 THE COURT: Okay. Now.

21 MR. THAGARD: The next four questions and answers  
22 deal with litigation in --

23 THE COURT: What lines?

24 MR. THAGARD: Litigation from 214. It's been  
25 highlighted there. And the settlements. And therefore we

1 find those objections and answers objectionable under 402,  
2 403, unreasonably prejudicial.

3 MR. B. GUTIERREZ: It's not identifying any  
4 particular settlement, it's just giving a scenario --

5 THE COURT: Well --

6 MR. B. GUTIERREZ: -- that -- sorry.

7 THE COURT: With respect to those there's no  
8 settlement, so that's -- okay.

9 MR. THAGARD: It has to do with this repurchase. If  
10 the loans are, if the loans are discharged or prepaid then  
11 they are repurchased, and that's, the evidence in this case  
12 is this loan was repurchased.

13 THE COURT: Did you object to that?

14 MR. THAGARD: Yes, ma'am, I have an objection on the  
15 record.

16 THE COURT: All right. Let's see that objection.

17 MR. THAGARD: The reason I'm making it, this is  
18 their clip on the -- I didn't take that next one, there is no  
19 objection.

20 THE COURT: That's the time to make your objections  
21 is when you're taking a deposition to object.

22 MR. THAGARD: Your Honor, I think all objections,  
23 and by agreement, all objections were reserved for trial  
24 except as to form.

25 THE COURT: Is that right?

1 MR. RUMLEY: It was taken pursuant to the Federal  
2 Rules, yes. Or -- sorry, Judge, I've just drawn a blank. I  
3 don't know.

4 THE COURT: Do you-all agree with that?

5 MR. RUMLEY: Someone that's a lot smarter than me.

6 MR. THAGARD: That was the agreement of the parties,  
7 Your Honor.

8 MR. B. GUTIERREZ: They didn't ask me, Judge.

9 THE COURT: Is there an agreement on objections, is  
10 that what you're talking about?

11 MR. THAGARD: Sure. We weren't making objections at  
12 the deposition.

13 MR. RANGEL: That was even as to form.

14 THE COURT: Was it at the beginning of this?

15 MR. THAGARD: That was the agreement throughout all  
16 of this litigation, Your Honor.

17 MR. RANGEL: These were taken under the rules, Your  
18 Honor, and the objections --

19 THE COURT: The ones I have seen, I think they were  
20 all made at the time. I think that you keep changing the  
21 rules. I don't understand what rules you're talking about,  
22 sorry.

23 MR. THAGARD: They have taken the position that we  
24 can't, there are several things where they say we can't make  
25 any objections except as to form.

1 MR. RUMLEY: They have objected to us saying -- we  
2 objected to leading objections and coaching the witness.

3 MR. THAGARD: They said you can't, you have no  
4 objections except as to form.

5 MR. RUMLEY: You-all wanted that, you-all didn't  
6 take exception.

7 THE COURT: Where was that agreement? Can you show  
8 me that?

9 MR. THAGARD: Meaning that the -- they get plenty of  
10 evidence.

11 THE COURT: On this objection, let me hear what  
12 Mr. Rangel has to say.

13 MR. RANGEL: Yes, Your Honor?

14 THE COURT: Now he wants to object at trial when  
15 nothing was objected to so they could have changed it, right?

16 MR. RANGEL: My understanding, Judge, when we were  
17 taking these depositions, that we needed to make objections  
18 as to form; otherwise, if there was objections they wouldn't  
19 be waived but that under the rules substantive objections  
20 would be made at time of trial.

21 THE COURT: That doesn't make any sense.

22 MR. RANGEL: However, they did continue to make,  
23 they --

24 THE COURT: Do you have an agreement to show me  
25 that?

1 MR. RANGEL: Judge, I've got where that's recited.  
2 I think we had an understanding all along that they were  
3 being taken under the rules, under the Federal Rules.

4 THE COURT: I am not understanding.

5 MR. RUMLEY: We agreed to take them under the rules,  
6 I just don't know which rules.

7 THE COURT: What rules?

8 MR. RUMLEY: Federal Rules.

9 MR. SPEAKER: Texas Rules?

10 MR. RANGEL: No. Under the Federal Rules.

11 THE COURT: I haven't seen the Federal Rules on  
12 this.

13 MR. RANGEL: These depositions, Your Honor, by  
14 agreement, and this is agreement, a clip can be used in the  
15 federal cases that are pending and the state cases, and so we  
16 were taking them under the Federal Rules and the Texas Rules.  
17 And I can, I believe Mr. Rumley can confirm this but  
18 certainly under the Texas Rules objections as to form have to  
19 be made at the time of the deposition or they're waived, but  
20 not the, but not the others.

21 MR. B. GUTIERREZ: Perhaps an example of their not  
22 wanting to waive objections is, for example, when they, when  
23 we deposed a certain individual --

24 THE COURT: Federal Rule of Civil Procedure on  
25 objections, and it says that --

1 MR. RANGEL: 30?

2 THE COURT: It says that the objections must be  
3 made, must be noted on the record. 30. "An objection at the  
4 time of the examination, whether it's evidence, to a party's  
5 conduct, to the qualification or the manner taken, any other  
6 aspect of the deposition, must be noted on the record."  
7 That's the Federal Rules. If you made some other agreement,  
8 why don't I leave this out right now and you-all try to find  
9 the agreement, if you made some contrary agreement to the  
10 Federal Rule.

11 MR. RANGEL: And I will represent to the Court that  
12 we do have an agreement that these depositions can be used --  
13 I'm sorry. I will represent to the Court that these  
14 depositions were being taken for use both in Federal Court  
15 and there are a couple of State Court cases.

16 THE COURT: I understand that, but when you say you  
17 took them pursuant to the Rules of Federal Procedure --

18 MR. RANGEL: Well, what I'm saying is they were  
19 taken --

20 THE COURT: All objections have to be made at the  
21 time.

22 MR. RANGEL: They were taken under both the Federal  
23 Rules and the Texas Rules.

24 THE COURT: Look, my problem is this, under Federal  
25 Rules you have got to make your objections at the time of the

1 deposition to preserve them. Now, if you made some other  
2 agreement --

3 MR. RANGEL: We will track down that other agreement  
4 that they could be -- in fact, I think it was one, an order  
5 entered by the Court that they could be used in both the  
6 state and federal litigation.

7 THE COURT: Yeah, but they have still got to be  
8 taken under both, you know, under our rules.

9 MR. RANGEL: Our position, taken under both rules,  
10 Your Honor.

11 THE COURT: You can take them under both rules, but  
12 oral objections weren't made at the time of the deposition.  
13 It doesn't make any sense.

14 MR. THAGARD: Our only objection to this whole  
15 deposition, it's to hold up their claim.

16 MR. B. GUTIERREZ: Mr. Rumley took the deposition  
17 and he's looking to see if there's an agreement and he  
18 doesn't find one.

19 THE COURT: Why don't we leave this out right now.  
20 You can add to it. I'll just tell the people that we need  
21 to, I do need to do some research on the objection. How's  
22 that?

23 (Bench conference ends)

24 THE COURT: The Clayton Homes has made an objection  
25 about a part of the deposition. I'm going to leave it out

1 right now while I do, while all the parties do some research  
2 on that particular objection, because I'm just not sure  
3 enough right now to rule on it. So I'm going to leave that  
4 out. It may come in later. Thank you.

5 (Video playing)

6 BY MR. RUMLEY:

7 Q "Would the land in lieu documents that we talked about  
8 that would be involved in the pool, the securitization, would  
9 they be stored in the vault?

10 A "If they were deemed to be not converted to real  
11 property, then they would be stored in the vault.

12 Q "Okay. And then if you flip to the next page there's  
13 another release and it says, "Release of installment  
14 contract." Is this, do you know what this document is?

15 MR. RANGEL: "Are you looking at 9651?

16 MR. RUMLEY: "Yes.

17 THE WITNESS: "(Perusing document) I don't. I  
18 don't know when they would use it.

19 BY MR. RUMLEY:

20 Q "You see it says 'Investor name, investor address'?

21 A "I see it, uh-huh.

22 Q "You don't know if this is the document that's used in a  
23 situation where you're repurchasing a land in lieu type  
24 document?

25 A "Well, I don't know -- these would be driven, all these



1 forms that we've just looked at that are forms, in other  
2 words, 96.44, 96.45, 96.47 and 96.51, would all be used after  
3 someone other than document personnel had determined and  
4 changed the coding in the system. So these would be in  
5 response to someone else coding it and their, them receiving  
6 notification that it's occurred. They wouldn't be driving  
7 this process. They would just be responding to a process  
8 with maybe these forms. But, no, I'm not sure when 96.51  
9 would be used.

10 Q "Okay. How does Vanderbilt obtain its financing today?

11 A "Vanderbilt obtains its financing today through a  
12 Berkshire subsidiary. The subsidiary issues bonds which --  
13 so instead of Vanderbilt issuing bonds, the subsidiary issues  
14 bonds.

15 Q "And when you repurchase a loan, who actually, how does  
16 the money exchange hands?

17 A "Vanderbilt would send money to the certificate account  
18 which is defined in these documents, would send funds for the  
19 unpaid principal balance and any accrued and unpaid interest  
20 to the certificate account, and it would be dispersed to the  
21 bondholders appropriately under this document within -- at  
22 the beginning of the following month when all the other  
23 monies were distributed.

24 Q "And with respect to how that would be disclosed to the  
25 bondholders or the trustee, it would just be shown or

1 reflected as a prepayment, correct?

2 A "It would be shown on the investor report, on the monthly  
3 investor report, on the line that has the prepayments.

4 Q "If a, if it's determined that Vanderbilt no longer has a  
5 valid security interest in real property, do they go ahead  
6 and repurchase the loan?

7 A "For just that stated reason? We would not go ahead and  
8 repurchase the loan because the customer is still obligated  
9 for paying on the home, and so the -- well, the customer  
10 would still be paying the regularly scheduled monthly  
11 payment. And that's really what the bondholder and everyone  
12 else is interested in is the normal monthly payments. They  
13 get normal monthly payment which is used to then, of course,  
14 pay the bondholder off on their investment and pay their  
15 interest and everything else, so --

16 Q "So -- sorry.

17 A "No, we would not have repurchased it for that."

18 (Video stopped)

19 MR. B. GUTIERREZ: That concludes our offer.

20 MR. THAGARD: Your Honor, we would like to offer  
21 additional designations from the deposition.

22 THE COURT: Go ahead.

23 PLAINTIFF'S PROFFER OF EVIDENCE

24 (Video deposition of Amber Krupacs playing)

25 EXAMINATION

1 BY MR. RUMLEY:

2 Q "When was the -- well, let me ask you this: Were you  
3 involved, or how were you involved with those securitizations  
4 back, '99 to 2003 time frame?

5 A "I would have been involved with high-level review of the  
6 documents in the transaction, but not a direct  
7 responsibility, an indirect responsibility, up through 2001.  
8 Starting with 2001, Septemberish, I would have had a much  
9 more direct role. So, prior to 2001 my role would have been,  
10 again, cursory review of the documents.

11 Q "And when you say documents, would those be documents  
12 related to the assets that were in the trust or would they be  
13 related to the securitization documents?

14 A "Securitization documents solely. The pooling servicing  
15 agreement, the prospectus.

16 Q "And how about after 2001, how did, how did your role  
17 change?

18 A "The role changed in 2001. I assumed, again, a much more  
19 direct relationship, would be involved with, still being the  
20 primary person responsible for reading the prospectuses, the  
21 pooling agreements, the -- would be responsible for pricing,  
22 having the pricing calls when you were selling the bonds,  
23 structuring discussions, what type of bonds to issue. Far  
24 more detail.

25 Q "When you have a loan that you're going to securitize,

1 you're going to sell that loan to investors, the loan is more  
2 valuable if it is backed by real property versus just the  
3 home, correct?

4 A "Not necessarily, no. It would depend on other  
5 characteristics of the loan.

6 Q "Like what?

7 A "Down payments. It would depend on the credit quality of  
8 the customer. So there would be other characteristics that  
9 would make a difference, whether it was a single-wide,  
10 whether it was a double-wide, whether it was in a park or it  
11 wasn't in a park.

12 Q "If you have, all of those are equal, the only difference  
13 is one is backed by real property and one is not, which one  
14 is more valuable to an investor?

15 A "In a Vanderbilt transaction neither is more valuable  
16 because they're going to get full principal either way.

17 Q "And is that what you tell your investors?

18 A "Investors are aware that Vanderbilt buys all the loans  
19 back if they go into default.

20 Q "Can you explain to me how, how does a deal like that get  
21 priced? Explain to the jury how it is that you put together  
22 this deal and how does it ultimately get priced.

23 A "A securitization trust is formed and Vanderbilt would  
24 contribute assets to the securitization trust. The  
25 securitization trust would give Vanderbilt, would -- the

1 securitization trust would create bonds and would give the  
2 bonds to Vanderbilt in exchange for the loans, the six to  
3 10,000 loans. Then Vanderbilt would take the bonds and they  
4 would sell them, almost a simultaneous thing, they would sell  
5 them with a securitization trustee. I'm sorry, I got lost  
6 there. They would sell them to an underwriter and the  
7 underwriter would then sell them to investors.

8 Q "Okay.

9 A "Bond investors. A deal gets priced -- you have these  
10 various bonds that have been created and through the  
11 prospectuses the, an offering memorandum, the deal is shown  
12 by underwriters, or the bonds are shown by underwriters to  
13 potential investors. Those potential investors then express  
14 interest to the underwriters, I would buy this bond at, and  
15 they price them in yield, so they don't say -- how they're  
16 usually priced, and you'll see this further in this book, is  
17 it shows off of either treasuries or off of swaps. So it  
18 says, I would buy this bond if I can get an interest rate  
19 equal to treasury plus 100 basis points. That's how they  
20 price them. And they have those discussions, and once the  
21 best prices are achieved they then would call us and they  
22 would say, We're ready to price today at such-and-such a  
23 time. And we would get on the phone with them and we would  
24 actually through a pricing quote, We're going to sell the A-1  
25 bonds for treasuries plus 35 or -- it's usually, in the A-1

1 bond, LIBOR plus 35 basis points. Okay. And we would agree  
2 to it. And then we would go to the next bond, the next bond,  
3 the next bond, until all the bonds were priced.

4 Q "And the information that would be provided to the  
5 various investors would be provided to them directly by the  
6 underwriter?

7 A "That is correct.

8 Q "Who actually prepares the prospectus and the  
9 supplemental prospectuses, if there is one? Is that  
10 something that Vanderbilt would do, or is that something that  
11 the underwriter actually prepares, or is it both?

12 A "The underwriter leads the process of preparing the  
13 prospectus. Vanderbilt has to supply certain information to  
14 go in the prospectus. And there are other parties that  
15 participate in the preparing of the prospectus. Various  
16 accounting firms validate certain of the information in the  
17 prospectus. There's other counsel. There's multiple  
18 counsels that also participate in supplying things to the  
19 prospectus.

20 Q "Okay. And you would never have any direct  
21 communication, and by you, I'm referring to you as  
22 Vanderbilt, would never have any direct communication with  
23 any of those investors with respect to these investments,  
24 correct?

25 A "We would not as literally selling this particular bond

1 type of conversation. We may have had conversations. It's  
2 possible if any investor would have wanted to ask us a few  
3 questions, we would have then had a conference call with  
4 them. We -- sometimes investors would come once a year and  
5 visit us and ask questions.

6 Q "If a customer prepays their loan, then an investor would  
7 earn less money on that investment?

8 A "Because he would have -- he would earn less -- he would  
9 get less interest on this particular bond, but he would  
10 possibly take the -- since he now got the principal back, he  
11 got his investment back faster than he anticipated, he could  
12 take that investment and reinvest it. To the extent the  
13 markets were better then, in other words, yielding higher, he  
14 would be thrilled if that was the situation.

15 Q "But the idea as to why it's a risk factor is because, I  
16 mean, yeah, you could pull your money out and then all of a  
17 sudden the stock market goes up, but why it's a risk factor  
18 is because if a customer prepays their loan, it affects the  
19 amount of investment that the investor is going to get back.

20 A "No, he's going to get the same amount of investment  
21 back. He is going to get his investment back or his  
22 principal element he is going to get back. So that's not  
23 what the risk is. Either way, whether they prepay it today  
24 or they pay it over the next 20 years, he's getting his  
25 investment back. What he's -- what is an influence there is

1 how much interest he's going to make on that investment.

2 Q "He's going to get less interest on the investment --

3 A "Yes.

4 Q "-- if a customer prepays it?

5 A "Yes.

6 Q "Okay. And so, for example, if you have this, this  
7 securitization, and half the people somehow pay off all their  
8 loans, then the interest that the investors would get off of  
9 this securitization would be less than if they all took 20  
10 years to pay off their loans?

11 A "They would earn less on this particular bond, but that's  
12 not to say they would earn less on this investment, because  
13 then they would take the same money that they had invested  
14 here and reinvest it someplace else, which could actually be  
15 yielding better.

16 Q "Or it could be worse?

17 A "Absolutely, which is why they're listing it as a risk,  
18 because it could go either way. Same thing could happen if  
19 people pay off too slow. People -- when bond investors are  
20 buying these things, they do not assume that everyone is  
21 going to pay to maturity, because they have enough historical  
22 record to know that everybody does not pay to maturity. So  
23 they also know it's not that either. So they know it's  
24 someplace in between.

25 Q "Okay.



1 A "These are educated, informed buyers who have their own  
2 models for doing this."

3 (Video stops)

4 MR. THAGARD: Your Honor, that concludes our  
5 proffer.

6 THE COURT: Thank you. Next witness?

7 MR. THAGARD: May we approach?

8 THE COURT: Yes.

9 (Bench conference on the record)

10 MR. THAGARD: Your Honor, the next witness they are  
11 going to call is a man who was retained by us, he's a  
12 securitization expert. You will remember they had some  
13 securities claims which you dismissed and they had, they had  
14 an expert, Henning.

15 THE COURT: They had what?

16 MR. THAGARD: They had an expert named Henning.

17 THE COURT: Okay.

18 MR. THAGARD: And we had a counter-expert named  
19 Glucksman, and they have, we filed a Daubert motion on  
20 Henning and they have withdrawn Henning, and now they are  
21 trying to call our securitization expert, Glucksman, not to  
22 testify on his opinions as to securitization but to testify  
23 on background facts and matters involving Texas lien law,  
24 which he is not an expert on.

25 THE COURT: Texas what?

1 MR. THAGARD: Texas lien law, sort of mortgages and  
2 releases, and he's not an expert on that. And he's a, at  
3 best a poor secondary source for questions they could --

4 THE COURT: Your expert?

5 MR. THAGARD: Well, he's not an expert on the  
6 predicate facts of this case or Texas lien law. Everybody  
7 agrees to that. And they are asking --

8 THE COURT: What do you want to use him for?

9 MR. RUMLEY: He does not, we don't ask him anything  
10 about the lien. What they don't like about him is he  
11 testifies that he spoke with Clayton Homes and that they  
12 repurchased all, every one of the 214 loans.

13 THE COURT: Back from Vanderbilt?

14 MR. RUMLEY: Yes. No, they repurchased them from  
15 the securitization, from the pool, and she just said that  
16 they would repurchase them if the loan was discharged.  
17 That's the whole thing. And he comes in and says we  
18 repurchased, they repurchased every one of them out of 214.

19 MR. THAGARD: That's been cleared up, and what they  
20 want to get into --

21 MR. RUMLEY: It hasn't.

22 THE COURT: How has it been cleared up?

23 MR. THAGARD: Well, it's, the whole testimony was a  
24 statement, misstatement by, that he says that Mr. Jordan told  
25 him they repurchased in 2005.

1 THE COURT: Did you list him as a witness?

2 MR. RUMLEY: Yes, and we listed him as an expert  
3 witness because we like him so much. And he asked his own  
4 expert questions and tried to clear this up, so it's not like  
5 this is some kind of a surprise.

6 MR. THAGARD: And he cleared, and he cleared it up.

7 THE COURT: Well, you can call him back.

8 MR. THAGARD: On the record. And then he, then he  
9 gave an errata sheet.

10 MR. RUMLEY: That's like five pages.

11 MR. THAGARD: And they want to read the information,  
12 they want to read the original answers instead of the errata  
13 sheet answers. The errata sheet answers under Rule 30E  
14 become the testimony.

15 THE COURT: He made corrections?

16 MR. THAGARD: Yes. He made corrections, he --

17 MR. RUMLEY: He made substantive changes like the  
18 light was red but now it's green.

19 MR. THAGARD: Which is, 30E allows him to correct  
20 his mistake, and --

21 THE COURT: You can play him as corrections.

22 MR. THAGARD: Those would be for impeachment and I'm  
23 not calling him. They are trying to read in his original  
24 answers which he corrected on the record that day and then  
25 later gave an errata sheet correcting those, and they want to

1 play those as the original answer which they are no longer.  
2 Under 30A they have been replaced. And I was calling him.

3 THE COURT: Overruled. Thank you.

4 (Bench conference ends)

5 MR. J. GUTIERREZ: Your Honor, we call Myron  
6 Glucksman by deposition testimony.

7 THE COURT: Thank you.

8 MR. J. GUTIERREZ: Mr. Rumley is going to read his  
9 responses. There is no video.

10 THE COURT: Okay.

11 MR. RUMLEY: May I go up there?

12 THE COURT: Please.

13 DEFENDANT'S PROFFER OF EVIDENCE

14 (Deposition read by Mr. J Gutierrez and Mr. Rumley)

15 MYRON GLUCKSMAN, WITNESS, BY DEPOSITION

16 MR. J. GUTIERREZ: After being duly sworn, question:

17 BY MR. J. GUTIERREZ:

18 Q "Sir, if you could identify yourself for us.

19 A "Myron Samuel Glucksman.

20 Q "Okay. How much time have you spent on this case?

21 A "Approximately 60 hours."

22 MR. J. GUTIERREZ: Your Honor, do you want me to  
23 indicate the page and line or just --

24 THE COURT: That would be good, yes.

25 MR. J. GUTIERREZ: Okay. Page 8, starting at line

1 25.

2 BY MR. J. GUTIERREZ:

3 Q "And we'll get through this in just a little bit, but do  
4 you recall when you were, through the documents, when you  
5 were first contacted in this matter?

6 A "I believe it was August 2nd.

7 Q "And we're sitting here on August 23rd, so from August  
8 2nd to the 23rd you have put in about 60 hours?

9 A "Yes, sir.

10 Q "All right. And I thought I read somewhere that you  
11 charge 850 an hour?

12 A "Yes, sir."

13 MR. J. GUTIERREZ: Ending at line 9. Starting page  
14 32, line 10.

15 BY MR. J. GUTIERREZ:

16 Q "Have you ever worked with Mr. Thagard before?

17 A "No.

18 Q "For his firm?

19 A "No.

20 Q "Have you ever done any work for Clayton Homes before?

21 A "No, not that I can recall.

22 Q "Or Vanderbilt?

23 A "Not that I can recall."

24 THE COURT: Could you move up closer to the  
25 microphone, please, Mr. Rumley. Thank you.

1 Q "Do you have any idea how they found you?

2 A "Yes.

3 Q "How?

4 A "My attorney in the National Century Financial case  
5 recommended me."

6 MR. J. GUTIERREZ: Ending at line 22. Starting at  
7 page 39, line 10.

8 BY MR. J. GUTIERREZ:

9 Q "All right. Going back to your sentence, prior to it  
10 being acquired by an affiliate of Berkshire Hathaway in 2003,  
11 and 'it' being Vanderbilt, correct?

12 A "Yes, sir.

13 Q "Vanderbilt financed its activities for the use of  
14 securitizations?

15 A "Yes.

16 Q "Okay. And just in a real general sense for a jury to  
17 understand, what Vanderbilt would do is they would package up  
18 a number of retail installment contracts, land/home, land in  
19 lieu contracts. They would even make, they would even maybe  
20 buy some from 21st Century or whatever and they would package  
21 them up and they would sell them as a security?

22 A "Yes."

23 MR. J. GUTIERREZ: Ending at line 25. Starting at  
24 page 55, line 18.

25

1 BY MR. J. GUTIERREZ:

2 Q "All right. Let me -- we have been talking about Section  
3 3.02 and pooling and servicing agreements and I have handed,  
4 I am not going to mark it since it's already been marked and  
5 we've killed enough trees, but just so the record is clear,  
6 we are looking at the January 25th, 2002 pooling and service,  
7 servicing agreement, which would apply to the 2002-A  
8 securitization, correct?

9 A "Yes."

10 MR. J. GUTIERREZ: Starting at page 58, line 6.

11 BY MR. J. GUTIERREZ:

12 Q "Okay. For example, the land in lieu, the retail  
13 installment contract, the deed of trust, mechanic's lien  
14 contracts that are involved in the Flores/Trevino case, that  
15 would be one of the contracts that's involved in that pool of  
16 contracts, correct?

17 A "Yes.

18 Q "And so what we are essentially, and so what essentially  
19 we are looking at is a group, for example, loans that  
20 originated out of store 214, loans from other parts of the  
21 country, and those loans are what make up the assets of this  
22 trust?

23 A "In fact, in 2002-A I believe the loans are from 47  
24 states.

25 Q "Okay. Okay. And so then with respect to 2002-A, does

1 that indicate the amount, the amount of those loans?

2 A "I think they aggregate something like 253 million.

3 Q "Okay. So is that the amount of money that is due on  
4 those contracts or those loans?

5 A "Yes."

6 MR. J. GUTIERREZ: Ending at line 25. Starting at  
7 page 59, line 1.

8 BY MR. J. GUTIERREZ:

9 Q "Okay. So the loans that make up this pool would be  
10 somewhere in the neighborhood of 253 million that's still  
11 owed, correct?

12 A "Yes.

13 Q "Okay. And then what Vanderbilt would do is they would  
14 pool this together and then they would go sell it like we've  
15 talked about, correct?

16 A "They would sell it to investors. They sell different  
17 bonds relating to this pool to different investors.

18 Q "Okay. And did they in fact sell this to investors?

19 A "Yes.

20 Q "And do you know how much money they raised?

21 A "Approximately what they put on the cover of the  
22 prospectus supplement net of expenses and underwriting  
23 discounts.

24 Q "What is it, roughly?

25 A "A little bit, close to 250 million."



1 MR. J. GUTIERREZ: Ending at line 19. Starting page  
2 60, line 13.

3 BY MR. J. GUTIERREZ:

4 Q "And then your understanding is that they would use that  
5 money, the 250 million, that they would use that to go ahead  
6 and fund their continuing operations?

7 A "Yes.

8 Q "So that they could go out maybe the next month and sell  
9 more loans out of store 214, correct?

10 A "Yes."

11 MR. J. GUTIERREZ: Ending line 20. Starting page  
12 62, line 19.

13 BY MR. J. GUTIERREZ:

14 Q "All right. Okay. If we go to Section 3.02.

15 A "Okay.

16 Q "And this is the section that talks about representations  
17 and warranties regarding each contract?

18 A "Right."

19 MR. J. GUTIERREZ: Ending line 23. Starting page  
20 63, line 5.

21 BY MR. J. GUTIERREZ:

22 Q "Okay. And each contract would be the contracts that  
23 make up the pool of the trust, correct?

24 A "That's correct.

25 Q "And so, and so when we're talking about each contract,

1 each contract would include the retail installment contract  
2 related to Mr. Flores and Mr. King?

3 A "That's correct.

4 Q "And then it says, quote, 'Vanderbilt represents and  
5 warrants to the trustee,' end quote. Who was the trustee?

6 A "I think it was JPMorgan.

7 Q "Okay.

8 A "Yes, JPMorgan Chase.

9 Q "Okay. So Vanderbilt represents and warrants to JPChase  
10 Bank and the certificate holders -- and the certificate  
11 holders would be the investors?

12 A "Yes.

13 Q "As to each contract, which would include Flores and  
14 King, right?

15 A "Yes.

16 Q "And then it identifies, I think you said, was it 24  
17 items?

18 A "Yes.

19 Q "All right. And do you believe that Vanderbilt's  
20 obligation to the trustee or the investors to tell them when  
21 any of these representations become false or become untrue,  
22 when they have to --

23 A "Well --

24 Q "-- when they have to disclose that to them?

25 A "Well, 3-0, 3.05 talks to that obligation.

1 Q "Okay. What is your understanding of when they are  
2 obligated to disclose to the trustee or the shareholder any  
3 of the representations and warranties made under 3.02 that  
4 later become not true?

5 A "Right. Well, under 3.05A it is not later than one  
6 business day after the first determination date, which is a  
7 monthly date, which is more than 90 days after Vanderbilt  
8 becomes aware or receives written notice from the servicer or  
9 trustee of a breach of a rep or warranty. So that's when  
10 they have that obligation to do something.

11 Q "And does that obligation end at some point? Or is it a  
12 continuing obligation?

13 A "That is a continuing obligation unless they've cured  
14 it."

15 MR. J. GUTIERREZ: Ending line 23. Starting at page  
16 67, line 11.

17 BY MR. J. GUTIERREZ:

18 Q "If you go to page number 30 of the prospectus, it's  
19 titled land and home contracts, mortgage loans.

20 A "Yes.

21 Q "Do you see that?

22 A "Yes.

23 Q "The very last sentence, it says, 'Although a deed of  
24 trust is similar to a mortgage, a deed of trust has three  
25 parties, the borrower,' which would be Vanderbilt -- I mean

1 which would it be?

2 A "Flores.

3 Q "The person buying the home, right?

4 A "Yes.

5 Q "The lender is the beneficiary, which would be  
6 Vanderbilt?

7 A "That's correct."

8 MR. J. GUTIERREZ: Ending line 1, page 68. Starting  
9 page 68, line 15.

10 BY MR. J. GUTIERREZ:

11 Q "Okay. But what this is telling the potential investor  
12 is that in a mortgage loan, land and home contracts, deed of  
13 trust is similar to a mortgage. Deed of trust has three  
14 parties, the borrower, which is the purchaser of the home;  
15 the lender, which is Vanderbilt; and then whoever the trustee  
16 is in the deed of trust, correct?

17 A "That's correct, yes.

18 Q "Then it says, 'Under the deed of trust the borrower  
19 conveys title to the property irrevocably until the debt is  
20 paid in trust, generally with a power of sale to the trustee  
21 to secure payment of the loan.' Did I read that right?

22 A "Yes. That's like a mortgage. Instead of a two-party,  
23 two parties for a mortgage, we have three parties with a deed  
24 of trust.

25 Q "With the third party just being the trustee?

1 A "That's correct.

2 Q "And so what this is telling a potential investor is,  
3 under the deed of trust the borrower conveys title to the  
4 property irrevocably until the debt is paid, right?

5 A "That's what it says.

6 Q "And then it says generally the power of sale to the  
7 trustee to secure payment of the loan. And so once the debt  
8 is paid in full, then the deed of trust is released, correct?

9 A "That's what typically happens."

10 MR. J. GUTIERREZ: Ending line 18 on page 69.

11 Starting at page 72, line 8.

12 BY MR. J. GUTIERREZ:

13 Q "Well, when they -- you have a general understanding that  
14 a mortgage or a deed of trust is placed on real property in  
15 order to secure payment on a loan, right?

16 A "Yes."

17 MR. THAGARD: Object. Your Honor, may we approach?

18 THE COURT: Yes.

19 (Bench conference on the record)

20 MR. THAGARD: These next two questions and answers  
21 ask Mr. Glucksman what his general understanding is of the  
22 application of mortgage law in Texas.

23 THE COURT: Sustained.

24 MR. THAGARD: Thank you.

25 (Bench conference ends)

1 MR. J. GUTIERREZ: Starting at page 101, line 14.

2 BY MR. J. GUTIERREZ:

3 Q "In a scenario where Vanderbilt or Clayton Homes, for  
4 whatever reason, chooses to discharge the debt, whether or  
5 not they find something in the underlying transaction or  
6 something they -- under those circumstances, they would  
7 repurchase the loan out of the pool?

8 A "That's correct.

9 Q "And that is, going to your report, that's one way that  
10 they could cure misrepresentation, correct?

11 A "That's correct."

12 MR. J. GUTIERREZ: Ending line 23. Starting page  
13 102, line 3.

14 BY MR. J. GUTIERREZ:

15 Q "Well, let me ask you this: Have you looked at the  
16 number of loans that have been repurchased out of the 2002-A  
17 pool?

18 A "I've looked at only the number, I believe, of the 214  
19 loans, yes.

20 Q "Have all of them been repurchased out of the pool?

21 A "I believe so."

22 MR. J. GUTIERREZ: Ending line 10. Starting page  
23 102, line 17.

24 BY MR. J. GUTIERREZ:

25 Q "Okay. But it's your understanding, based on talking to

1 Mr. Jordan, that all of the loans that originated out of  
2 store 214 were repurchased out of the pools?

3 A "Those that are the land in lieu related loans, yes.

4 Q "All right. And one of those situations where, for  
5 whatever reason, the debt is discharged, that's a situation  
6 where they would repurchase them out of the pool, correct?

7 A "Well, if the debt is discharged, I would think that they  
8 would repurchase the loan, yes.

9 Q "And do you know if that's what happened with respect to  
10 the land in lieu transactions?

11 A "I don't know for sure what they did with those loans.

12 Q "Was that what Mr. Jordan said or Ms. Krupacs?

13 A "I believe they repurchased all those 214 loans, yes.  
14 And therefore they would have sent the proceeds to the  
15 trust."

16 MR. J. GUTIERREZ: Ending line 15 on page 103.  
17 Starting on page 121, line 25.

18 BY MR. J. GUTIERREZ:

19 Q "How much money, in just the -- you have looked at five  
20 securitizations, right?

21 A "Yes."

22 MR. THAGARD: Your Honor, we object as irrelevant,  
23 the amount of money they made on five securitizations. It  
24 doesn't involve the Flores/King loan and there's only one  
25 loan, one securitization involving the Flores/King loan.

1 MR. J. GUTIERREZ: Your Honor, it just goes to  
2 motive.

3 THE COURT: I'm sorry, let me see counsel at the  
4 bench.

5 (Bench conference on the record)

6 THE COURT: Again, this problem was not objected to  
7 at the time of the deposition, so you have to stop that.

8 MR. J. GUTIERREZ: Yes.

9 MR. THAGARD: There's no objection at the time of  
10 the deposition as to that question.

11 MR. J. GUTIERREZ: It was relevant as to the amounts  
12 of money.

13 THE COURT: Just so we're clear about this.

14 MR. THAGARD: All right. There's an agreement among  
15 the parties.

16 THE COURT: I don't see an agreement but, you know,  
17 let's leave that out and let you bring it back in and figure  
18 it out over lunchtime, okay? Because I don't understand --  
19 you know, I don't, I'm really not really not sure that I get  
20 what your agreement is. If you are going to use these in  
21 Federal Court you've got to follow the Federal Rules of  
22 Procedure. But I'll look at your agreement.

23 (Bench conference ends)

24 MR. J. GUTIERREZ: Starting page 121, line 25.  
25



1 BY MR. J. GUTIERREZ:

2 Q "How much money, in just the -- you have looked at five  
3 securitizations, right?

4 A "Yes.

5 Q "How much money has Vanderbilt received in those five  
6 securitizations?"

7 MR. THAGARD: Same objection, Your Honor. I think  
8 that's what we just covered.

9 MR. J. GUTIERREZ: And it was overruled as far as I  
10 understand it because no objection at the deposition, Your  
11 Honor.

12 THE COURT: We are going to save those as we did the  
13 previous things, okay?

14 MR. J. GUTIERREZ: Okay. Starting at page 126, line  
15 10.

16 BY MR. J. GUTIERREZ:

17 Q "Okay. Your handwriting on that document that you've  
18 looked at right there --

19 A "Yeah.

20 Q "Is that just your notes from your conversation from  
21 Ms. Krupacs?

22 A "No, this is actually from Mr. Jordan and it refreshes my  
23 recollection as to the total loans repurchased that were both  
24 from 214 and those that were not from 214.

25 Q "Which is how much?

1 A "Well, there were about 140 or so from 214 and there  
2 were, it looks like, over 1,000 or so more that were non-lot  
3 214 loans.

4 Q "If you look, it has 2002-A, 33, the number of land in  
5 lieu, and then it's got --

6 A "Right."

7 MR. J. GUTIERREZ: Ending line 25, page 126.

8 Starting page 127, line 1.

9 BY MR. J. GUTIERREZ:

10 Q "-- 1.3 million and change?

11 A "That was the principal amount, face amount of the 33  
12 loans.

13 Q "And those 33 loans would have been land in lieu out of  
14 store 214?

15 A "That's correct.

16 Q "So Vanderbilt actually repurchased or paid 1.3 to the  
17 2002-A pool relating to those 2,000 -- to those 214 loans?

18 A "They repurchased, my understanding, they repurchased the  
19 33 loans with 1.375 million. That's the principal. And they  
20 also repurchased 200, an additional 241 loans representing  
21 8.1 million or so in principal.

22 Q "Okay. The 1.3 million and change for the store 214  
23 loans that were in the 2002-A pool, when did they repurchase  
24 those?

25 A "I believe in 2005.

1 Q "How about with respect to the 2000-C --"

2 MR. THAGARD: Your Honor, the next set of questions  
3 again involves the same issue I raised with regard to the  
4 other five securitizations, and so we would --

5 THE COURT: Sustained.

6 MR. J. GUTIERREZ: Starting at page 128, line 1.

7 MR. THAGARD: I think --

8 MR. J. GUTIERREZ: Starting at page 129, line 5.

9 BY MR. J. GUTIERREZ:

10 Q "All right. And Mr. Jordan didn't tell you why they  
11 repurchased them, or did he?

12 A "Well, yeah, I guess it just says something about due to  
13 defaults without.

14 Q "But we now they didn't all default, right? You don't  
15 have any information that everybody in store 214 defaulted in  
16 2005?

17 A "I'm just looking at the note here, so I don't know if I  
18 assumed that or I heard that. But I think it's fair to say I  
19 don't know all the reasons why they repurchased those loans.

20 Q "Okay. But one of the reasons why you would repurchase a  
21 loan is to try to correct a misrepresentation, right?

22 A "A potential misrepresentation, yes."

23 MR. THAGARD: I would ask that you finish reading  
24 the answer.

25 THE WITNESS: "But also, at least for the certainty

1 for the non-214 loans, some of them were just defaults write-  
2 offs which the company had no obligation to repurchase but  
3 repurchased as a matter of course of conduct."

4 MR. J. GUTIERREZ: Starting page 130, line 1.

5 BY MR. J. GUTIERREZ:

6 Q "Right. Like if they wrote off a loan for whatever  
7 reason, they would repurchase it, right?

8 A "Company, the interesting thing about VMF is they  
9 purchased, they repurchased loans that were, that were  
10 written off, that defaulted, and they didn't have an  
11 obligation to do that if that was the only issue, but that  
12 was their course of conduct.

13 Q "Okay. And based on your understanding of their course  
14 of conduct, it looks like, with respect to 214, sometime in  
15 2005, that's when they repurchased all these loans, right?

16 A "It's my understanding. I may be incorrect, but that was  
17 my understanding."

18 MR. J. GUTIERREZ: Pass the witness, Your Honor,  
19 subject to me being able to recall the excerpts of other  
20 portions.

21 THE COURT: Thank you.

22 MR. THAGARD: Your Honor, we would like to read in  
23 our part.

24 THE COURT: Go ahead.

25 MR. THAGARD: All due respect, Mr. Rumley, I'd like

1 somebody else to read it.

2 PLAINTIFF'S PROFFER OF EVIDENCE

3 (Deposition read by Mr. Thagard and Mr. Sledge)

4 MR. THAGARD: Beginning at page 11, line 7.

5 BY MR. THAGARD:

6 Q "Okay. With respect to the other documents on the CDs,  
7 the thousands of pages of discovery in the cases, all those  
8 types of documents, did you review any of those with respect  
9 to your work on this case?

10 A "Yes.

11 Q "Okay. Do you remember which ones?

12 A "Yes. And then I looked at the deal books.

13 Particularly, since they were all the same, almost all the  
14 same in terms of structure, I focused on one or two, and I  
15 looked at the prospectus supplement in detail, looked at the  
16 underlying prospectus in less detail because I'm familiar  
17 with both prospectus supplements and base prospectuses. And  
18 then I reviewed the pooling and servicing agreement, again,  
19 focusing on those particular sections such as Section 3,  
20 Section 7, Section 9, for articles, articles that I thought  
21 were relevant, particularly relevant to this case. And then  
22 my standard approach is also to look at rating agency  
23 letters. I looked at both the outside counsel and in-house  
24 or local counsel opinions and there was, you know, one or two  
25 emails, you know, this Fitch email that we may or may not

1 talk about concerning an upgrade of the deals. And that was  
2 enough for me to get going and begin to draft my report."

3 MR. THAGARD: Going to page 17, beginning with line  
4 18.

5 BY MR. THAGARD:

6 Q "All right. And so just for a jury to think about it,  
7 for someone who doesn't have all of your background, just  
8 something very simple would be if an investor is trying to  
9 figure out, I'm going to put some money in the stock market,  
10 right, I'm going to put some money in a CD, and the CD is  
11 less risky, typically including, you know, the stock market,  
12 in a very simplistic view, is that what we're talking about?

13 A "You could use that analogy as long as it's, you know, a  
14 CD from a bank that has government, has FDIC insurance, but,  
15 you know, you're talking about two different asset classes  
16 here.

17 Q "Right, but I'm just --

18 A "But, yes, in terms of risk, if they were looking to buy  
19 a savings bond, that would be pretty safe. No matter what  
20 the papers say, the Government of the United States is highly  
21 likely to pay back the money that you invest in a savings  
22 bond for five or ten years. You'll get back your money and  
23 you'll get back interest. And that's equivalent to AAA. So  
24 we are not saying necessarily that these bonds are exactly  
25 the same as that, but the ratings are the same. And so from

1 a credit risk point of view, those Vanderbilt bonds that were  
2 rated AAA are basically just as safe, from a rating agency's  
3 perspective, as the savings bonds that you can buy at your  
4 local bank from the government."

5 MR. THAGARD: Page 34, line 9.

6 BY MR. THAGARD:

7 Q "Okay. When you wrote your report, both as an expert in  
8 securitization and based on your knowledge as an attorney,  
9 did you set out all the opinions that you intend to give in  
10 this case in your report?

11 A "I have one additional opinion since I've written the  
12 report.

13 Q "Okay. What's that?

14 A "The opinion, which wasn't clear at the time I wrote the  
15 report but now it's clear, that the release of the land in  
16 lieu leases are not, don't implicate Section 3.02 of the  
17 pooling and servicing agreement.

18 Q "The release of the land in lieu?

19 A "A release of a land in lieu lien is not covered by any  
20 of the 24 rep and warranties listed in Section 3.02.

21 Q "What's that based on?

22 A "Based on 3.02K and V that, I believe, clearly indicate  
23 that security interests that they're referring to are the  
24 security interests on the homes and of any land on which the  
25 home is situated as part of the mortgage, as opposed to any

1    liens on other collateral that supports the overall credit  
2    for the borrower.

3    Q    "All right. And where did you receive that information  
4    to form a new opinion?

5    A    "It was really taking a closer look at 3.02. Again, I  
6    had, you know, eight days or so to read all these documents.  
7    And so, as I indicate in the report, I assumed that the land  
8    in lieu release, for the purposes, for the limited purposes  
9    of this report, were a breach, a potential breach, and  
10   therefore how would I deal with that.

11   Q    "All right. And so now you're saying that the assumption  
12   you made in your report is an incorrect assumption?

13   A    "No. I'm saying that the assumption I made in my report  
14   is correct, that if you assume that the land in lieu releases  
15   are a potential breach then my conclusions are what they are.  
16   It's not material, and whatever my conclusion was. And, but  
17   I'm saying that now I'm very confident that those releases  
18   did not cause any breach in the pooling and servicing  
19   agreement."

20               MR. THAGARD: Page 51, line 11.

21   BY MR. THAGARD:

22   Q    "Other than looking at this land in lieu release out of  
23   store 214, have you done anything to determine, to look at  
24   the contracts, look at the deeds of trust, look at the  
25   lending processes of this coverage, to determine whether or



1 not there are any issues with respect to binding obligations  
2 under the loans?

3 A "No, but I did ask if the deals had been paying out and I  
4 did take notice of the Fitch letter. Whether it was 2007,  
5 2010, I forget. I think it was 2010 that indicated that they  
6 were ready to upgrade some deals, including one of the  
7 deals -- at least in that deal they were going to reaffirm --  
8 including one of the deals, the five-year, and that gave me a  
9 good sense that the company has been, the securities, the  
10 bonds, had been paying off."

11 MR. THAGARD: Page 117, line 14.

12 BY MR. THAGARD:

13 Q "In the context of securitization, is the appraised value  
14 of real property, is that important?

15 A "In the context of this deal, what's important is the  
16 value of the manufactured home, because that's what the  
17 contract and the cash flow that's going to pay back the  
18 investors, that's where the cash flow is going to come from."

19 MR. THAGARD: Page 133, beginning on line 10.

20 BY MR. THAGARD:

21 Q "Mr. Glucksman, just to make sure the record is clear on  
22 a number of things, I think you testified earlier that the  
23 discharge of a loan might be a reason to repurchase it,  
24 correct?

25 A "Yes.

1 Q "Okay. Under the pooling and servicing agreement, there  
2 might be one of many reasons that might retrigger a  
3 repurchase obligation, right?"

4 MR. J. GUTIERREZ: Objection, leading.

5 MR. THAGARD: Your Honor, they called this witness.  
6 I'm just redirecting or --

7 THE COURT: Is there an objection in this?

8 MR. J. GUTIERREZ: There is, there's an objection in  
9 here, it's leading and he was their expert.

10 MR. THAGARD: Your Honor, they called this witness.  
11 Under 611C, I'm adversely crossing.

12 THE COURT: Sustained. And you did it in the  
13 deposition?

14 MR. J. GUTIERREZ: Yes, Your Honor.

15 THE COURT: Sustained.

16 BY MR. THAGARD:

17 Q "And you have no opinion or knowledge supporting  
18 Mr. Rumley's inference --"

19 MR. J. GUTIERREZ: Where are you starting from,  
20 Mr. Thagard?

21 MR. THAGARD: I've gone to 22.

22 MR. J. GUTIERREZ: Okay.

23 BY MR. THAGARD:

24 Q "Okay. And you have no opinion or knowledge supporting  
25 Mr. Rumley's inference that the debt on any of the lot 214

1 land in lieu loans was ever discharged?"

2 MR. J. GUTIERREZ: Objection, leading.

3 THE COURT: Sustained. Overruled. I'm sorry.

4 MR. THAGARD: Can I read that again, Your Honor?

5 THE COURT: Yes, sir.

6 BY MR. THAGARD:

7 Q "Okay. And you have no opinion or knowledge supporting  
8 Mr. Rumley's inference that the debt on any of the lot 214  
9 land in lieu loans was ever discharged?

10 A "I don't know whether they were or they weren't.

11 Q "Do you have any knowledge one way or the other whether  
12 the debt on the lot 214 land in lieu loans was discharged or  
13 not?

14 A "No."

15 MR. J. GUTIERREZ: Objection.

16 MR. THAGARD: Going to page 135, beginning line 123  
17 (sic).

18 BY MR. THAGARD:

19 Q "I ask this because there was a long series of questions  
20 by Mr. Rumley about the lot 214 loans being repurchased. Do  
21 you know when those lot 214 loans were repurchased, if at  
22 all?

23 A "Thank you for asking that because it gives me a chance  
24 to correct the record. I don't know when they were  
25 repurchased. I just assumed for the purposes of my report

1 analysis that they were all repurchased in 2005.

2 Q "So Mr. Rumley's questions about your notes there, would  
3 you like to clarify your testimony with regard to the lot 214  
4 loans, would you pull that piece of paper out?

5 A "Yes.

6 Q "And what the point, purpose of your notes were?

7 A "It was really to understand the total dollars that  
8 Vanderbilt was repurchasing from the trust in relation to the  
9 loans that were land in lieu loans for each of these various  
10 trusts, and that's all it was.

11 Q "And do you have an opinion as to whether --

12 A "Well, this went to my opinion that -- all right.

13 Q "Finish your answer. Finish your answer. Finish your  
14 question. Finish your answer.

15 A "Yeah, this was, to the extent that all these loans were  
16 repurchased, even assuming they were all repurchased in 2005,  
17 these would not be material in terms of disclosure for the,  
18 for the securitizations."

19 MR. THAGARD: All right. And would you read in the  
20 certification on page 140, please?

21 MR. SLEDGE: "I, Myron Samuel Glucksman, have read  
22 the foregoing deposition and hereby affix my signature that  
23 same is true and correct, except as noted above."

24 MR. THAGARD: 126, all right, 126, beginning at line  
25 10.

1 BY MR. THAGARD:

2 Q "Okay. Your handwriting on that document --" excuse me.

3 "Okay. Your handwriting on that, the document that you're  
4 looking at right there, is that just your notes from your  
5 conversation with Ms. Krupacs?

6 A "No, this actually compares the total of all loans  
7 repurchased in 2005 with the principal balance of all lot 214  
8 loans in the securitization pools.

9 Q "Which is how much?

10 A "This compares the about 140 or so loans from lot 214 in  
11 the pools and there were, it looks like over 1,000 or so or  
12 more that were non-lot 214 loans."

13 MR. THAGARD: Page 127, beginning at line 7.

14 BY MR. THAGARD:

15 Q "So Vanderbilt actually repurchased or paid that 1.3  
16 million to the 2., to the 2002-A pool related to those 214  
17 loans?

18 A "I do not know what lot 214 loans, if any, Vanderbilt  
19 repurchased in 2005 or in any other year. These notes  
20 reflect the assumption I made for purposes of measuring  
21 materiality."

22 MR. THAGARD: That concludes our proffer, Your  
23 Honor.

24 THE COURT: Thank you. You may stand down. Call  
25 your next witness.

1 THE MARSHAL: Your Honor, the jury, they want a  
2 break.

3 THE COURT: Twenty-minute morning break. Would you  
4 please stand for the jury.

5 (Jury exits at 9:54 a.m.)

6 THE COURT: Okay.

7 MR. RANGEL: How long a break do we have, Your  
8 Honor?

9 THE COURT: Twenty. Anything to take up outside the  
10 presence of the jury?

11 MR. RANGEL: Judge, just following up on --

12 MR. RUMLEY: Your Honor, I'll point out to the  
13 Court, we did agree, and it's noted in the Glucksman  
14 deposition, that the deposition was to be taken pursuant to  
15 Texas and Federal Rules of Civil Procedure. Now, the issue  
16 is, is whether or not, obviously the federal --

17 THE COURT: Well, you are here in Federal Court.

18 MR. RUMLEY: The federal are more restrictive, so --

19 THE COURT: Apparently.

20 MR. RUMLEY: And so it's still our position that if  
21 they, if they followed the Texas Rules then obviously they  
22 didn't follow the federal procedure and since we are in  
23 Federal Court federal procedure applies, so we would again  
24 assert that any objection not made would be waived.

25 MR. RANGEL: Your Honor, I think there's some

1 confusion here. Federal Rule 32 --

2 THE COURT: B.

3 MR. RANGEL: B. "An objection --" objections to  
4 admissibility. "Subject to Rules 28B and 32D3, an objection  
5 may be made at a hearing or trial to the admission of any  
6 deposition testimony that would be inadmissible if the  
7 witness were present and testifying." Judge, we've been  
8 taking depositions for years and the only objections that are  
9 asserted are as to form. I mean --

10 THE COURT: Sorry, I've never seen them like that in  
11 Federal Court. They are all objected to and I rule on them  
12 at the final pretrial conference.

13 MR. RANGEL: 32B3, "An objection to a deponent's  
14 confidence -- or to the confidence, relevance or materiality  
15 of testimony -- is not waived by a failure to make the  
16 objection before --"

17 THE COURT: "Unless the ground for it might have  
18 been corrected at that time."

19 MR. RANGEL: Yes, but we, if the objection is to  
20 relevance, I mean, how could it be corrected, Judge? I mean  
21 we take depositions and --

22 THE COURT: I'm sorry, now I forgot what the  
23 objection was to the --

24 MR. THAGARD: Your Honor, the objection was as to  
25 the testimony about the other five securitizations are

1 irrelevant. There's only one securitization in which the  
2 Flores/King loan was a part.

3 THE COURT: I sustained.

4 MR. THAGARD: That applies to all the remaining  
5 testimony.

6 MR. SOLTERO: Your Honor, I think we are prepared on  
7 the exhibits.

8 MR. RUMLEY: I believe we are. Your Honor --

9 THE COURT: Oh, okay, thank you. Are any of those  
10 objected to?

11 MR. SOLTERO: Yes, Your Honor.

12 THE COURT: Tell me which ones.

13 MR. SOLTERO: Your Honor, there's, the following --  
14 some of them have several objections. One objection goes to  
15 a large number of them, which is the fact that these are all  
16 pattern witnesses. I know Your Honor has already ruled. I'm  
17 just preserving the objection.

18 THE COURT: That's all right.

19 MR. SOLTERO: And that would be to 95, 96, 97, 462,  
20 98, 99.

21 THE COURT: Wait a minute. 95, 96, 97, 462.

22 MR. SOLTERO: 98, 99, 101, 102, 232, 225, 226, 227,  
23 230, 231 and 233.

24 THE COURT: And those are the ones that I let them  
25 examine --



1 MR. SOLTERO: Two --

2 THE COURT: -- and overruled your objection at that  
3 time?

4 MR. SOLTERO: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. SOLTERO: And in particular, most of these have  
7 to do with like deed of trust releases and that sort of a  
8 deal.

9 THE COURT: I understand. Overruled. So I am  
10 admitting 233, 231, 95, 96, 97, 462, 98, 99, 102, 103, 232,  
11 225, 226, 227 and 230.

12 (Defendant's Exhibits 95 through 99, 102, 225 through  
13 227, 230 through 233 and 462 admitted into evidence)

14 MR. SOLTERO: And, Your Honor, hold on. 462 and  
15 101, we have an additional objection, which is --

16 THE COURT: Oh, I'm sorry.

17 MR. SOLTERO: That's --

18 THE COURT: Tell me again. 462?

19 MR. SOLTERO: Yes, just 462 and 101, there's an  
20 additional objection.

21 THE COURT: Go ahead.

22 MR. SOLTERO: Those two, unlike the others which are  
23 basically documents and there's a question about the notary  
24 or what have you, these are like entire customer files and so  
25 there's no relevance to that.

1 THE COURT: Sustained.

2 MR. SOLTERO: Okay. And that would be 462 and 101?

3 THE COURT: 101.

4 MR. SOLTERO: Okay.

5 THE COURT: So those are no longer admitted.

6 (Defendant's Exhibits 101 and 462 not admitted into  
7 evidence)

8 MR. SOLTERO: Okay. And then as to 114,  
9 Mr. Gutierrez and I have reached an agreement which is the  
10 first page that was shown to the jury of Mr. Frazier's --

11 THE COURT: Can be admitted?

12 MR. SOLTERO: Can be admitted. The rest not.

13 THE COURT: So 114 is only page 1?

14 MR. SOLTERO: Yes, Your Honor.

15 THE COURT: Then that's admitted.

16 (Defendant's Exhibit 114 admitted into evidence)

17 MR. SOLTERO: And then we have an objection to 234,  
18 which is a printout from the Secretary of State, I think, of  
19 Mr. Moore's notary record, and my basis is relevance, what  
20 relevance does this have. We have had the testimony on it,  
21 why do we need the document?

22 MR. B. GUTIERREZ: We played it, there was no  
23 objection, my recollection, there was no objection to this  
24 exhibit either at deposition or during the playing of the  
25 deposition.

1 MR. SOLTERO: He is correct.

2 THE COURT: Okay. So 234 is admitted.

3 (Defendant's Exhibit 234 admitted into evidence)

4 MR. SOLTERO: And then --

5 THE COURT: 466 is the only remaining one.

6 MR. SOLTERO: Yes, Your Honor. No objection to that  
7 one.

8 THE COURT: 466 is admitted.

9 (Defendant's Exhibit 466 admitted into evidence)

10 THE COURT: Thank you-all very much.

11 MR. B. GUTIERREZ: Could I just read them to make  
12 sure, Your Honor, that we have them?

13 THE COURT: 466, 234, 233, 231, 95, 96, 97. 462 is  
14 sustained. 98, 99, 102, 114, 232, 225, 226, 227 and 230 are  
15 admitted.

16 MR. B. GUTIERREZ: Thank you, Your Honor.

17 THE COURT: Anything else?

18 MR. SOLTERO: I don't believe so, Your Honor.

19 Actually, yes, actually, and we can wait until we've got  
20 Mr. Gutierrez, the other one comes back. Your Honor, we  
21 have, Mr. Gutierrez and I have been discussing the charge  
22 quite a bit and we have exchanged redlines of what -- from  
23 the Court's charge. How would Your Honor like us to provide  
24 that to the Court? Would you like that electronically or  
25 would you like a printed-out version of the redlines?

1 THE COURT: Either way. If you've got it  
2 electronically I'll take it now.

3 MR. SOLTERO: Okay. I think I can get it sent to  
4 Ms. Scotch.

5 (Recess at 10:01 a.m. until 10:25 a.m.)

6 THE COURT: Let's bring in the jury.

7 (Jury enters at 10:25 a.m.)

8 THE COURT: Thank you. You may be seated. You may  
9 proceed.

10 MR. B. GUTIERREZ: Yes, Your Honor. We would call  
11 Mr. Cesar Flores.

12 CESAR FLORES, DEFENDANT'S WITNESS, SWORN

13 THE CLERK: Thank you. Please be seated.

14 MR. B. GUTIERREZ: May I proceed?

15 THE COURT: You may proceed.

16 DIRECT EXAMINATION

17 BY MR. B. GUTIERREZ:

18 Q Good morning, Mr. Flores.

19 A Good morning.

20 Q You have testified during the trial of this cause, is  
21 that correct?

22 A Yes, sir.

23 Q Question, Mr. Flores: You and Mr. King, Mr. Alvin King,  
24 were the only persons -- well, strike that. Were you and  
25 Mr. King the only persons that paid any consideration, any

1 money on your loan and on your contract?

2 A Yes, sir.

3 Q How much money did you pay after the releases were filed  
4 in October of 2005?

5 A I believe it was 26,269, possibly, and some change.

6 Q Did the collection calls continue, did the collection  
7 calls from Vanderbilt continue after the releases were filed  
8 in 2005?

9 A Yes, sir.

10 Q Did field chases continue after 2005?

11 A Yes, sir.

12 Q And did you have individuals from the Clayton store go to  
13 your residence to try to collect the debt after the releases  
14 were filed in 2005?

15 A Do you mean individuals as far as employees, direct  
16 employees at that time, or people that maybe might have been  
17 employed by them?

18 Q Yes.

19 A Yes, sir, we did.

20 Q When you made payments on your contract, were those  
21 payments, did any of those payments -- were any of those  
22 payments made through Western Union MoneyGrams, Mr. Flores?

23 A Yes, sir.

24 Q Was the U.S. Mail used occasionally to make payments on  
25 your contract?

1 A Yes, sir.

2 Q Did you at times use the telephone to make payments on  
3 your contract?

4 A I believe we did, sir.

5 Q We have been here for a few days now. Could you, could  
6 you tell us how this litigation has affected you in any way,  
7 first of all?

8 A It's affected me in a couple of ways. First of all, the  
9 stress. The embarrassment. I have had to deal with things  
10 this last year that I have never dealt with before. So it's  
11 been hard.

12 Q You have heard the testimony of folks from Vanderbilt,  
13 people from CMH Homes, and you have seen documents displayed  
14 on this Elmo on the screen, the releases. When was it that  
15 you first discovered that these releases had been filed,  
16 Mr. Flores?

17 A I believe when I first came looking, came to you looking  
18 for help.

19 Q And now that you've heard the testimony, for example, we  
20 heard from Mr. Nichols about the deplorable conditions at one  
21 of his stores, store 214; we heard the testimony from  
22 Mr. Booth testify that a decision in 2005 had been made to  
23 release all outstanding loans that had land associated with  
24 it; now that you've heard the testimony from these  
25 individuals, how does that make you feel?

1 MR. RANGEL: Your Honor, I object to the form of the  
2 question. It misstates, mischaracterizes the testimony. For  
3 example, he --

4 THE COURT: Sustained.

5 BY MR. B. GUTIERREZ:

6 Q Can you tell us anything else about what you've been  
7 through, what you're going through, concerning this  
8 litigation and how it has affected you?

9 A Well, it's affected me in a few ways. First and  
10 foremost, probably financially. I'm a hairstylist, so I work  
11 off of strict commission. If I'm not at work, I'm losing,  
12 I'm not making money. I don't get paid for, for any time  
13 absence. I'm just, I'm also losing clients. The other  
14 stylists at the salon are having to take them in, so they are  
15 prebooking with them I've noticed. I have suffered from  
16 anxiety attacks which I never dealt with before, which is why  
17 I currently stay with my mom. It's a little bit of comfort  
18 being with her.

19 Q How about emotionally?

20 A Emotionally, it's, again, been very trying. You know, to  
21 some people this might be just a trailer home. To me it's my  
22 home. It's also, you know, I'm fighting for not just myself  
23 but a child that I take care of.

24 Q And who is this child?

25 A She is my great-niece. She was born back in May of '07.

1 Q And who are her parents?

2 A Her parents are my nephew and his ex-girlfriend.

3 Q And with respect to the collection efforts, specifically  
4 after 2005, how and in what, how have -- how did the  
5 collection efforts affect you in any way?

6 A It's affected me. You know, it's made me a little angry.  
7 You know, they are correct in that phone calls were made to  
8 neighbors and relatives, but more information than I felt  
9 needed to be shared was shared. For example, having the girl  
10 who lives across the street from me come knocking on --

11 MR. RANGEL: Your Honor, I would object to any  
12 hearsay testimony. He's about to testify to what somebody  
13 else told him.

14 THE COURT: If you are about to say something that  
15 someone else told you, you can't say that.

16 THE WITNESS: I cannot? Okay. Yes, sir. Having  
17 just, just knowing the knowledge that people knew that I was  
18 behind on payments was a little humiliating. I, you know,  
19 I've worked hard all my life for what I have. Nothing's ever  
20 been handed to me. So the fact that I got to a point in my  
21 life where I could not make payments because I could not  
22 financially afford them, for one, was hard to accept, and  
23 two, to know that others, you know, strangers know that my --

24 MR. RANGEL: Again, Your Honor, object. He's  
25 referring to hearsay testimony.



1 THE COURT: Sustained.

2 THE WITNESS: It's been hard, it's been difficult.

3 MR. B. GUTIERREZ: Mr. Flores, I believe that's all  
4 the questions I have.

5 THE WITNESS: Yes, sir.

6 MR. RANGEL: May I proceed, Your Honor?

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. RANGEL:

10 Q Mr. Flores, if I understand your testimony, you are  
11 seeking money damages for stress that you have suffered as a  
12 result of this litigation. Is that correct?

13 A Yes, sir.

14 Q And you understand that Vanderbilt filed this lawsuit to  
15 repossess the home against you and Mr. King because you had  
16 defaulted in your payment, correct?

17 A Yes, sir.

18 Q And in this lawsuit you have filed a counterclaim. You,  
19 yourself, in fact have filed a lawsuit against Vanderbilt,  
20 correct?

21 A Correct.

22 Q And that's part of this litigation that you say is  
23 causing you stress for which you want to be awarded money  
24 damages, correct?

25 A Correct.

1 Q Now, back, let's say, to the spring of 2009. You were  
2 having some difficult times before the litigation, correct?

3 A Yes, sir.

4 Q There were stresses resulting from the fact that you and  
5 Mr. King were having a hard time making the payments,  
6 correct?

7 A Yes, sir.

8 Q And additional stresses came about when Mr. King left,  
9 correct?

10 A Yes, sir.

11 Q And, of course, that's all before the litigation, right?

12 A Yes, sir.

13 Q And also way before the litigation, you had other  
14 stresses in your life resulting from the fact that you had  
15 some personal family losses, correct?

16 A Yes, sir.

17 Q I believe your father passed away, correct?

18 A He passed away in June of '02. My sister passed away in  
19 January of '07. In between those two deaths my sister's  
20 husband, my brother-in-law, was killed in a car accident. I  
21 want to say it was possibly the year before. I don't know  
22 the exact date.

23 Q And these events, and I'm sorry for your loss, but that  
24 had nothing to do with Vanderbilt, correct?

25 A No, sir.

1 Q Those were just things that happened in your life that  
2 resulted in stresses in your life, correct?

3 A They resulted, they resulted in sadness and stress, yes.

4 Q And as I understand it, Mr. Flores, you are also seeking  
5 damages for what you say are amounts that you paid to  
6 Vanderbilt that you feel you didn't have to pay, correct?

7 A I believe so, yes.

8 Q And, of course, and it's related to these releases that  
9 we've been talking about, correct?

10 A Yes, sir.

11 Q And it's your testimony that you did not find out about  
12 those releases until you went to see Mr. Gutierrez in the  
13 fall of 2009, is that --

14 A I believe so, yes, sir.

15 Q All right. But -- oh, by the way, but those releases,  
16 you're talking about the deed of trust release and the  
17 builder's and mechanic's lien release, those documents that  
18 were filed in October of 2005, correct?

19 A I believe so.

20 Q You didn't pay any money for those releases, did you?

21 A No, sir.

22 Q Mr. Flores, you indicated that you have worked hard over  
23 the years, correct?

24 A Yes, sir.

25 Q You have been in business for a number of years, correct?

1 A Yes, sir.

2 Q And what is your current business, Mr. Flores?

3 A I'm a hairstylist.

4 Q For whom do you work?

5 A Oh, I work for Gloria's Hair Productions in Alice.

6 Q Okay. And you have been steadily employed for a number  
7 of years, correct?

8 A There was a time shortly after my sister passed away that  
9 I, I took some time off from work. There was just a lot to  
10 deal with at that time and I worked, live in Alice and worked  
11 in Corpus, and so I took a few months off work.

12 Q But other than that you have been steadily employed for  
13 the past number of years, correct?

14 A Yes, sir.

15 Q For example, when you were looking, when you and Mr. King  
16 were looking to buy this mobile home, you submitted income  
17 information, correct?

18 A Yes, sir.

19 Q And in fact your employer at the time also submitted  
20 income information, correct?

21 A I believe so, yes.

22 Q If we could pull up --

23 MR. B. GUTIERREZ: Excuse me, Your Honor. May we  
24 approach?

25 THE COURT: Yes.

1 (Bench conference on the record)

2 MR. B. GUTIERREZ: Excuse me, Your Honor. I believe  
3 he is getting to a point where he wants to start talking  
4 about Mr. Flores' not filing any income tax returns for a  
5 certain period of time -- let me just finish -- and we renew  
6 our objections under relevance grounds, 402 and 403. We  
7 don't believe that the evidence is relevant. Could be  
8 probative, could be probative. We believe that any probative  
9 value, that him not filing income tax returns would  
10 substantially prejudice his claims as a party in this case.

11 MR. RANGEL: Judge, all I'm doing is laying the  
12 predicate. I'm not going to ask that question until the, if  
13 he's not going to bring an independent source in.

14 THE COURT: Yes, you're going over to the place, the  
15 question now?

16 MR. RANGEL: Sure. And, Judge, under that  
17 Bustamante case, 403 is not a factor in the prejudice that --

18 MR. B. GUTIERREZ: For the Court Appeals it's not --

19 MR. RANGEL: That is not a factor in considering  
20 whether or not to admit this.

21 MR. B. GUTIERREZ: But for the Court of Appeals it's  
22 not --

23 THE COURT: This is a weight question.

24 MR. RANGEL: It's a 64B, yes.

25 THE COURT: It is a federal question, whether or

1 not.

2 MR. RANGEL: Yes.

3 THE COURT: And I have discretion under that.

4 MR. RANGEL: Yes. Yes, Your Honor.

5 MR. B. GUTIERREZ: Correct, Judge.

6 THE COURT: And I --

7 MR. B. GUTIERREZ: But, Judge, credibility is so key  
8 in this case.

9 THE COURT: I know, but let me tell you what I see  
10 as distinguishable, possibly, and you can tell me  
11 (indiscernible) Bustamante. Bustamante was a criminal case.  
12 All these cases, Hatchett and Bustamante were criminal cases.  
13 Bustamante, the judge allowed in income tax records, one of  
14 the records, because he had been accused of bribery and that  
15 was key, but he didn't report the bribes, he didn't pay taxes  
16 on the bribes, and I see that as a key to Bustamante. Under  
17 Hatchett, Hatchett was a lawyer who was prosecuted for  
18 failure to file income tax returns, and his partner who also  
19 failed, law partner who also failed to file tax returns was  
20 credited, was discussing the practices of the law firm. I  
21 think it was really relevant in that case. It goes to show  
22 his lack of concern about the importance of filing tax  
23 returns. So I am not a hundred percent convinced. I will  
24 let you argue more about it. Under 608, I'm just not  
25 convinced this is relevant to this matter.

1 MR. RANGEL: Okay. Judge, if it were an isolated  
2 incident, but he failed to make '05, '06, '07, '08, and --

3 THE COURT: I understand, but I'm just saying, I  
4 couldn't find any other cases about that issue of failing to  
5 file tax returns except --

6 MR. RANGEL: And these are the cases we cited.

7 THE COURT: And I will accept those two cases, and I  
8 would let it in on, if it's appellate. When character  
9 witnesses come in to testify on behalf of defendants, I think  
10 it has to do with what they consider to be criminal and what  
11 they don't consider criminal. And in our system we still  
12 have, we can still go back and amend our tax returns, file  
13 old ones, pay the penalties and interest, and it won't be a  
14 criminal matter, and I don't see it as a criminal matter or  
15 evidence of bad character. It can be really stupid, but --

16 MR. RANGEL: And we are not suggesting it's a  
17 criminal matter. We are just suggesting that that is  
18 evidence that goes to his honesty on an individual's income  
19 tax return.

20 THE COURT: I see it in those two cases, absolutely,  
21 but I'm not sure I see it on this one.

22 MR. B. GUTIERREZ: Okay. Thank you, Your Honor.

23 MR. RANGEL: I just, so I should not, I should not  
24 pursue this predicate then, if I understand what you're  
25 saying, and the constraints.

1 THE COURT: If you want to ask him what his income  
2 was, that's okay.

3 MR. RANGEL: That's what I was thinking, I just --

4 THE COURT: I don't see any reason --

5 MR. RANGEL: And I will --

6 MR. B. GUTIERREZ: Excuse me. On what, Judge?

7 MR. RANGEL: Just on income.

8 THE COURT: Yes.

9 MR. RANGEL: I'm going to just touch on that. So  
10 is, right now is the Court, can I further develop a  
11 predicate?

12 THE COURT: Yes.

13 MR. RANGEL: Before the Court makes a final  
14 determination?

15 THE COURT: Yes.

16 MR. RANGEL: Okay.

17 (Bench conference ends)

18 MR. RANGEL: I would call up CP8 at 172.

19 MR. B. GUTIERREZ: Before it's displayed, excuse me,  
20 we object to questions outside the scope of direct  
21 examination, Judge. Excuse me, direct examination.

22 MR. RANGEL: Judge, he asked him questions about  
23 working, earning money.

24 THE COURT: Overruled. Thank you.

25



1 BY MR. RANGEL:

2 Q Mr. Flores, you were here when we were talking about VOE  
3 and VOI. That's verification of employment and verification  
4 of income. Do you recall that?

5 A Yes, sir.

6 Q And in connection with your purchase of this mobile home,  
7 this document was submitted. Who is Willie Monta?

8 A I have no idea.

9 Q Well, who is Salon Diva, what's Salon Diva?

10 A Salon Diva is a salon I worked at.

11 Q Yeah. You worked there in -- before you bought the  
12 mobile home this is where you worked, right?

13 A I believe I worked there shortly -- during the process I  
14 went from Salon Diva to Ma Salon.

15 Q Anyway, this pertains to you, correct?

16 A I, it appears to, yes.

17 Q And so --

18 THE COURT: May I see counsel at the bench for just  
19 one minute.

20 (Bench conference on the record)

21 THE COURT: I must tell you, that's the salon I used  
22 to go to for years. I didn't realize that and I don't  
23 recognize this gentleman.

24 MR. B. GUTIERREZ: No problem, Judge.

25 MR. RANGEL: We don't have a problem with that.

1 THE COURT: I think I need to say I went there when  
2 it was over in Wyatt Plaza.

3 MR. B. GUTIERREZ: Judge, we --

4 THE COURT: I needed to call that to your attention.

5 MR. B. GUTIERREZ: I don't have a problem with that.

6 MR. RANGEL: Don't have problems with it at all.

7 THE COURT: But never this gentleman.

8 MR. B. GUTIERREZ: And he hasn't indicated to us  
9 that he recognizes you.

10 THE COURT: Okay. Not my hair or anything, right?

11 (Bench conference ends)

12 BY MR. RANGEL:

13 Q So, in this document, Mr. Flores, Mr. Monta is stating  
14 that Cesar Flores worked at Cesar's Hair Palace as a  
15 beautician and makes approximately \$1,550 a month and has a  
16 year-to-date income of \$17,681, is that correct? Is that  
17 what the document shows?

18 A Yes, sir.

19 Q Well, and by the way, how do you spell your name?

20 A C-E-S-A-R.

21 Q You spell it Ceaser, right?

22 A C-E-S-A-R.

23 Q Right. And so you have used that spelling from time to  
24 time?

25 A The spelling on the screen or the monitor?

1 Q Yes.

2 A No, sir, I never have.

3 Q So are you saying that Mr. Monta is incorrect in  
4 referring to you as Ceaser Flores?

5 A I did not prepare this form, sir, so, I mean Cesar Flores  
6 is my name, Cesar Flores, but I don't spell it the way it's  
7 spelled on the form.

8 Q Very well. So, this was one verification of income that  
9 was submitted when you were in the process of purchasing the  
10 mobile home, correct?

11 A I believe so.

12 Q And another one was the credit application that you  
13 submitted, correct?

14 A Correct.

15 Q And that is CP9 72-73. I believe yours is on the left.  
16 And if we move over to the right I think the -- there we go.  
17 And in this credit application that you submitted you  
18 indicated that your gross salary was \$1400 a month, right?

19 A Correct.

20 Q Which was lower than the amount that Mr. Monta had  
21 submitted which was \$1,550 a month, correct?

22 A Yes, sir.

23 Q And after you purchased the mobile home, you continued to  
24 be in business, correct?

25 A Yes, sir.

1 Q You continued working different places as a hairstylist,  
2 correct?

3 A There were two places that I worked at, yes, sir.

4 Q Yeah. And except for that period of time when you took  
5 some time off a couple of months when your sister passed, you  
6 were working continuously, correct?

7 A Yes, sir.

8 Q And you were working, and you were earning income  
9 continuously?

10 A Yes, sir.

11 Q In fact, you earned income continuously, including the  
12 period 2005, 2006, 2007, 2008, correct?

13 A Yes, sir.

14 Q During those four years you were earning money and making  
15 money, correct?

16 A I was working, yes, sir.

17 MR. RANGEL: May we approach, Your Honor?

18 THE COURT: Yes.

19 (Bench conference on the record)

20 THE COURT: Yes, sir?

21 MR. RANGEL: Judge, I believe I have laid the  
22 predicate that he was making money.

23 THE COURT: Yes, I'm just going to rule  
24 (indiscernible).

25 MR. RANGEL: Okay, thank you.

1 (Bench conference off)

2 BY MR. RANGEL:

3 Q And these stresses that you identified that you have,  
4 they're related to the litigation, is that correct?

5 A I'm sorry?

6 Q The stresses that you talked about that you have, those  
7 are related to this litigation that you are involved in,  
8 correct?

9 A The stresses that I have now, yes, sir.

10 Q All right. So, as I understand it, Mr. Flores, you are  
11 here in court seeking money damages from Vanderbilt and you  
12 are also asking that you be given a mobile home for which you  
13 have not paid in full. Is that correct?

14 A I believe that I am here fighting for my home.

15 Q But you acknowledge that you didn't make the 144  
16 payments, correct?

17 A Yes, sir.

18 Q And so you want Vanderbilt to give you that home even  
19 though you have not made all those payments, correct?

20 A I believe -- correct. I believe --

21 MR. RANGEL: Objection. Nonresponsive. He said  
22 correct, that he was not.

23 THE COURT: Thank you. Anything else?

24 MR. RANGEL: Pass the witness, Your Honor.

25 THE COURT: Thank you. Anything further? I didn't

King - Direct

1 ask Mr. Rumley?

2 MR. RUMLEY: No, Your Honor, nothing from me.

3 REDIRECT EXAMINATION

4 BY MR. B. GUTTIEREZ:

5 Q And just so we're clear, the litigation we're talking  
6 about is a lawsuit that was filed by Vanderbilt against you  
7 personally as well as Mr. King, is that correct?

8 A Yes, sir.

9 MR. B. GUTIERREZ: That's all we have, Your Honor.

10 RECROSS-EXAMINATION

11 BY MR. RANGEL:

12 Q But the litigation also includes the lawsuit that you  
13 have filed against Vanderbilt, correct?

14 A Yes, sir.

15 MR. B. GUTIERREZ: Pass the witness, Your Honor.

16 THE COURT: Thank you. You may stand down, sir.

17 Call your next witness.

18 MR. B. GUTIERREZ: We call Mr. Alvin King.

19 ALVIN KING, DEFENDANT'S WITNESS, SWORN

20 THE CLERK: Would you have a seat, please, and watch  
21 your step.

22 MR. B. GUTIERREZ: May I proceed, Your Honor?

23 THE COURT: Yes.

24 DIRECT EXAMINATION

25 Q Mr. King, you have testified earlier in this litigation,

1 is that correct?

2 A Yes, sir.

3 Q Okay. We asked you some questions about your involvement  
4 concerning the purchase of this mobile home that is the  
5 subject of this litigation, is that correct?

6 A Yes, sir.

7 Q I'd like to ask you a few questions about yourself and  
8 how the lawsuit that has been brought against you by the  
9 Vanderbilt Mortgage and Finance Company has affected you  
10 personally or emotionally. Can you tell us a little bit  
11 about that, Mr. King?

12 A Personally it has affected me mentally, emotionally,  
13 several, you know, several different things that -- first of  
14 all, you know, buying the mobile home. You go to a place to  
15 buy a mobile home and you think you can trust those people,  
16 and from learning from the litigation and everything that was  
17 here, I don't feel that that's the case. There was a lot of  
18 things that went on that shouldn't have went on and we were  
19 never aware of that. This has affected me in many ways also  
20 as far as work, losing time paid because of having to take so  
21 many days off. It's just, it's really affected me in many  
22 ways.

23 Q Emotionally, can you tell us anything about that?

24 Mentally, emotionally?

25 A Emotionally, my personal life coming public. Also

1 emotionally, to remember all the struggles that myself and  
2 Cesar had over the years that we were paying for the mobile  
3 home, how sometimes we worked day and night to fight to save  
4 our home. And, you know, it was stated that we take care of  
5 our customers; I don't feel I was taken care of.

6 MR. B. GUTIERREZ: That's all I have, Your Honor.  
7 Pass the witness.

8 CROSS-EXAMINATION

9 BY MR. RANGEL:

10 Q As I understand it, Mr. King, the damages resulting from  
11 this stress, these stresses that you're talking about, you  
12 are referring to the stresses that are related to this  
13 lawsuit in which you are involved, correct?

14 A Yes, sir.

15 Q And, as you know, Vanderbilt filed this lawsuit against  
16 you and Mr. Flores after the payments were no longer being  
17 made, correct?

18 A Correct.

19 Q And then, after Vanderbilt filed the action to repossess  
20 the mobile home against you and Mr. Flores, you, yourself  
21 filed a counterclaim, a lawsuit, correct?

22 A Yes, sir.

23 Q And so that's part of this litigation that you're talking  
24 about that is generating stresses for you, correct?

25 A Yes, sir.



1 Q You also indicated that you did not believe that  
2 Vanderbilt has taken care of you, correct?

3 A Correct.

4 Q And it is true, Mr. King, is it not, that over the years  
5 you and Mr. Flores were late many times, correct?

6 A Correct.

7 Q And it is true also that you were the one that primarily  
8 made the calls to the call center to see if you could work  
9 something out, correct?

10 A Correct.

11 Q And you heard Ms. Kim Russell testify here from the  
12 stand, from where you're sitting, and she said that she  
13 worked with you many, many times, correct?

14 A She did work with me many times but she was not my only  
15 account representative. There were many others. Yes, she  
16 did work with me but the things that she stated that the  
17 company offers were never offered to us.

18 Q It is true that there were many, many, many months when  
19 you were late in your payments, correct?

20 A Yes, sir.

21 Q And it is true that there were many, many months where  
22 Vanderbilt, through representatives like Ms. Russell,  
23 accepted late payments and continued to work with you so you  
24 could stay in your home, correct?

25 A Yes, sir.

1 Q And you will agree that there were stresses while you-all  
2 were living in the mobile home related to difficulties from  
3 you not being able to make the payments and just general  
4 stresses that come in life when people are living together,  
5 correct?

6 A Correct.

7 Q And certainly Vanderbilt is not responsible for those  
8 ordinary stresses that come from just living, correct?

9 A Not all of it.

10 Q And you two did not, you're saying that you didn't know  
11 about these releases that were filed in '05 until you went to  
12 see Mr. Gutierrez in the fall of 2009, correct?

13 A Correct.

14 Q And, by the way, you haven't paid any money, any money to  
15 anyone for those releases that you are relying on, correct?

16 A No, sir.

17 Q Is that correct?

18 A I don't believe so.

19 Q Correct?

20 A Correct.

21 Q Like Mr. Flores, you are in court seeking money damages  
22 while at the same time asking that you be given title to this  
23 mobile home even though you have not fully paid for it,  
24 correct?

25 A Correct.

1 MR. RANGEL: Pass the witness.

2 THE COURT: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. B. GUTIERREZ:

5 Q But you paid on your mobile home before the releases were  
6 filed, you were paying for the mobile home before the  
7 releases were filed, you were paying for the mobile home at  
8 the time the releases were filed, and you continued to pay  
9 for the mobile home even after the releases were filed, is  
10 that correct?

11 A Yes.

12 MR. RANGEL: Objection to form. Leading,  
13 multiplicity of questions.

14 THE COURT: Sustained.

15 BY MR. B. GUTIERREZ:

16 Q Did you, Mr. King, and Mr. Flores, did both of you pay  
17 consideration, pay money on your mortgage and on your  
18 contract to, on your mortgage and on your contract before the  
19 releases were filed?

20 A Yes, sir.

21 Q Did you continue to pay money in consideration after the  
22 releases were filed?

23 A Yes, sir.

24 Q With respect to the stresses concerning the collection  
25 efforts that were made by the Vanderbilt Company, can you

1 recall some of those collection efforts that were made by the  
2 Vanderbilt people after the releases were filed?

3 A Like, like Kim said, I mean she would work, she would  
4 work with us from time to time. She did get stern at times  
5 when, you know, we were behind and I was having trouble, you  
6 know, coming up with the money. There were other account  
7 representatives that were not so nice and that's why I asked  
8 for her a lot of times, because she would talk to you where  
9 the other people would pretty much tell you that if you  
10 didn't make the payment, you know, they were going to take  
11 the house.

12 Q How about personal, personal contact, people going to  
13 where you work or where you live, did that happen?

14 A I do know that they called my work. I don't recall them  
15 ever coming to my work. I do recall them coming to the, to  
16 the house. They would call my work. They were asked several  
17 times not to call at work and still continued to call.

18 Q And how did they behave during those collection efforts  
19 that, where they made them at, personally at your house?

20 A There was a couple of times that it went okay but there  
21 were some times that we had collectors come out there and  
22 they would holler at you, they would talk very ugly to you, I  
23 mean to the point that the neighbors would come out to see  
24 what was going on, and threaten you if you didn't pay, make  
25 your payment, that they were going to take, they were going

1 to take your house.

2 MR. B. GUTIERREZ: Pass the witness.

3 RECROSS-EXAMINATION

4 BY MR. RANGEL:

5 Q So you will agree, Mr. King, that Kim Russell worked with  
6 you and in fact you sought her out when you were calling  
7 them?

8 A Yes, sir. I never said that she didn't work with me, but  
9 there were times that she was stern.

10 Q And even when she was stern she was willing to work with  
11 you?

12 A Most of the time.

13 Q And, by the way, you left the mobile home in April of  
14 2009, right?

15 A I moved to live with my mother, yes, I did.

16 Q And you were -- you didn't make any more payments,  
17 correct?

18 A I believe I made a payment in April.

19 Q But after you left the mobile home with no intention to  
20 return, as far as you were concerned it was going to be  
21 Mr. Flores' responsibility because he was going to be living  
22 there, correct?

23 A Mr. Flores was going to be paying the payments because he  
24 was going to be living there.

25 Q But, under the retail installment contract that both of

1 you signed, both of you were obligated to make those  
2 payments, correct?

3 A Correct.

4 MR. RANGEL: Pass the witness, Your Honor.

5 THE COURT: Thank you.

6 MR. B. GUTIERREZ: No further questions, Your Honor.

7 THE COURT: Thank you, sir. You may stand down.

8 Call your next witness. Mr. Gutierrez?

9 MR. B. GUTIERREZ: Excuse me, Your Honor.

10 THE COURT: Next witness?

11 MR. B. GUTIERREZ: We close.

12 THE COURT: You close? I'll see counsel at the  
13 bench then.

14 (Bench conference on the record)

15 MR. B. GUTIERREZ: I'm sorry, Judge, correction, we  
16 rest. We rest, I'm sorry.

17 THE COURT: Rest?

18 MR. B. GUTIERREZ: Yes, I'm sorry.

19 THE COURT: Thank you.

20 MR. SOLTERO: Your Honor, Vanderbilt makes two  
21 motions at this time, one on the defensive claims, the  
22 counterclaims filed by Mr. Flores and Mr. King, and we'll  
23 also be reurging the one we filed previously, filing another  
24 motion. The first one I have a courtesy --

25 THE COURT: The two filed over the weekend, I saw

1 the responses, those are denied. Next?

2 MR. SOLTERO: Yes, Your Honor. This is a courtesy  
3 copy for Your Honor.

4 THE COURT: Thank you.

5 MR. SOLTERO: We'll be filing it electronically.  
6 Here's a courtesy copy for counsel.

7 MR. B. GUTIERREZ: Thank you, Mr. Soltero.

8 MR. SOLTERO: This is on Mr. Flores' and Mr. King's,  
9 their counterclaims. On that, Your Honor, if I may, we move  
10 on all of their counterclaims. Specifically, we move on the  
11 issue of the release. As a matter of law there's legally  
12 insufficient basis for a reasonable jury to conclude that  
13 they were paid in full and that there was a release. They  
14 failed to meet the essential elements of releases:  
15 Specifically, one, that Vanderbilt intended to release the  
16 indebtedness despite their failure to fully pay, which is  
17 undisputed. Number two, there was no meeting of the minds  
18 between Vanderbilt and either Mr. Flores or Mr. King on a  
19 release. Number three, there's no consideration to support  
20 the release. In order to establish the affirmative defense  
21 of release Mr. Flores and Mr. King had to have proved the  
22 elements of a contract, which they did not do in this case.  
23 In addition, Your Honor, as we put in our motion in writing  
24 which we incorporate fully, releases are strictly construed.  
25 Mr. --

1 THE COURT: Well, if Vanderbilt had an assignment,  
2 then wasn't there a contract?

3 MR. SOLTERO: I'm sorry, Your Honor?

4 THE COURT: If Vanderbilt had an assignment, wasn't  
5 there a contract between Flores and King and Vanderbilt?

6 MR. SOLTERO: There was, Your Honor, but not a  
7 subsequent release of that contract.

8 THE COURT: I see what you're talking about.

9 MR. SOLTERO: And absolutely, Judge, we believe that  
10 the assignment issue is a matter of law in Vanderbilt's  
11 favor. As one Texas Supreme Court case has said, the rule is  
12 simple, unless a party is named in a release, he is not  
13 released. And that's the McMillan case, Texas Supreme Court,  
14 1971. More recently, the Duncan versus Cessna and Victoria  
15 Bank versus Brady cases all talk about people --

16 THE COURT: You see, the confusing part of this is  
17 that on the release, on the releases the note that was signed  
18 by Flores and King was referenced and they are the only ones  
19 who signed any note, and that was the referenced note.

20 MR. SOLTERO: But, Your Honor, that is not released.  
21 There is nothing indicating that the loan was discharged.

22 THE COURT: All I'm saying is -- I understand your  
23 argument.

24 MR. SOLTERO: Yes, Your Honor, and --

25 THE COURT: There are just some cases that ought to



1 go to jury. They're fine at disposition.

2 MR. SOLTERO: I understand, Your Honor. We know  
3 that -- so that's our argument on --

4 THE COURT: I got your motion, I consider it timely  
5 filed at the appropriate place after the defendants and  
6 counterclaimants have rested, and that is Flores and King.

7 MR. SOLTERO: Yes, and --

8 THE COURT: But file it electronically.

9 MR. SOLTERO: I will, Your Honor. If I may finish,  
10 there's also no intent, no proof of intent to release, and it  
11 would be an unjust enrichment. Moving on to the second cause  
12 of action, Your Honor, on unfair debt collection. We just  
13 heard from Mr. King --

14 THE COURT: Can I just, while the jury is here can I  
15 just read this later and we'll continue on and carry it  
16 forward?

17 MR. SOLTERO: Yes, Your Honor.

18 THE COURT: Thank you. Unless you have some  
19 argument that's not in the motion.

20 MR. SOLTERO: No, Your Honor, we incorporated it in  
21 full.

22 THE COURT: Thank you.

23 MR. SOLTERO: We also, Your Honor, at this time  
24 would like to file our motion for judgment as a matter of law  
25 at the close of Flores' and King's evidence on collection

1 claims against Flores and King; in other words, reurging, or  
2 a new motion that is on the same grounds as the previous one.

3 THE COURT: Thank you.

4 MR. SOLTERO: Also, we will file that  
5 electronically. And here's a copy for counsel.

6 THE COURT: You've got some more stuff there.

7 MR. SOLTERO: Yes, Your Honor, that --

8 THE COURT: That's for later?

9 MR. SOLTERO: Your Honor, Judge, and I would  
10 incorporate all the arguments in our written motion in full.  
11 If Your Honor would like, I could go into them in detail.

12 THE COURT: Thank you. I'd like to read them.

13 MR. SOLTERO: Okay.

14 THE COURT: Thank you.

15 MR. RANGEL: Judge, we have a witness, I believe, in  
16 turn.

17 THE COURT: Well, don't we have to have the  
18 Trevinos?

19 MR. RUMLEY: I'm going to call Mr. Trevino, and then  
20 my handwriting expert.

21 MR. RANGEL: Well, I think the procedure, what we're  
22 trying to figure out, they have rested and then --

23 THE COURT: Well, King and Flores have rested on  
24 their cross-claims and defenses.

25 MR. RANGEL: Right, and before we close, we have --

1 THE COURT: You may close after Mr. Rumley has put  
2 on his evidence as to the two Trevinos.

3 MR. RANGEL: Okay. Let me confer with counsel.

4 THE COURT: Thank you.

5 MR. J. GUTIERREZ: Your Honor, just in terms of  
6 timing, there's not a lot of time left in this trial.

7 THE COURT: There's what?

8 MR. J. GUTIERREZ: There's not a lot of time left in  
9 this trial.

10 THE COURT: Oh.

11 MR. J. GUTIERREZ: Do you want us to do written  
12 responses to these motions or can we argue some points to the  
13 Court if the Court wants --

14 THE COURT: However you want to do it is all right  
15 with me.

16 MR. SOLTERO: And Your Honor, just to be clear, I  
17 understand what's happening is we are not resting on our, or  
18 we have a defense we can put on to their counterclaim, the  
19 witness we're recalling, but Your Honor is indicating that  
20 the intervention case goes first?

21 THE COURT: I'm sorry, maybe I have the wrong --

22 MR. RANGEL: My understanding on how we are going to  
23 proceed is that --

24 THE COURT: You should put on your defense, the King  
25 and Trevino.

1 MR. RANGEL: Right.

2 THE COURT: And have him do that, and then

3 Mr. Rumley --

4 MR. RANGEL: And we have one witness.

5 THE COURT: That's fine.

6 MR. RANGEL: And then we will rest and close and  
7 then he will, Mr. Rumley will open with his intervention.

8 THE COURT: Is that fair enough to you?

9 MR. RUMLEY: We didn't --

10 THE COURT: I think that's probably correct.

11 MR. RUMLEY: We didn't talk about it but --

12 THE COURT: I think that's the procedure we're  
13 following.

14 MR. RUMLEY: Okay.

15 MR. B. GUTIERREZ: I didn't, I have understood it  
16 was going to be after -- excuse me. Baldemar Gutierrez. I  
17 had understood in talking to Mr. --

18 THE COURT: They're done. When they rest and close  
19 they're done, and they can't put on any response to  
20 Mr. Rumley.

21 MR. RANGEL: No, no, no, no, no.

22 THE COURT: (Indiscernible) under 1795.

23 MR. RANGEL: Let me make one short quick response.

24 THE COURT: I think this is correct. I think  
25 procedurally this is correct.

1 (Bench conference ends)

2 THE COURT: Thank you all. So, Mr. Flores and  
3 Mr. King have rested, and do you have any rebuttal witnesses  
4 just for the King/Flores counterclaim and defense?

5 MR. RANGEL: We do, Your Honor.

6 MR. THAGARD: Your Honor, we'd call Kim Russell back  
7 to the stand.

8 THE COURT: Thank you.

9 (Court conferring off the record with clerk)

10 THE COURT: Could you come forward, please, ma'am.  
11 And I have asked Ms. Gano to reapply the oath.

12 KIM RUSSELL, PLAINTIFF'S WITNESS, SWORN

13 THE CLERK: Would you have a seat, please, and watch  
14 your step.

15 REBUTTAL TESTIMONY

16 DIRECT EXAMINATION

17 BY MR. THAGARD.

18 Q Thank you, Ms. Russell.

19 A Thank you.

20 Q You're an account representative for Vanderbilt, correct?

21 A Yes, sir.

22 Q Okay. And we talked the other day. One of the things  
23 Vanderbilt does if it can't get in touch with a customer is  
24 to call the neighbors and relatives, correct?

25 A Yes. Yes, sir.

1 Q Okay. And is it Vanderbilt's policy to protect the  
2 customer's personal information during those calls?

3 A Yes, sir.

4 Q And are you trained not to disclose that personal  
5 information?

6 A Yes, sir, we are trained not to talk anything about the  
7 loan itself to anyone that it's not okay to speak with, just  
8 a general, leave a general message for that customer to call  
9 us back.

10 Q And when these calls are placed, those calls are written  
11 down by the account representative, correct?

12 MR. B. GUTIERREZ: Objection, leading, Your Honor.

13 THE COURT: Sustained.

14 BY MR. THAGARD:

15 Q Are records made of each and every one of those calls?

16 A Yes, sir.

17 Q And have you had an opportunity to review those calls?

18 A Yes, sir.

19 Q Okay. Have you seen any evidence in Vanderbilt's records  
20 that any personal information of either Mr. Flores or  
21 Mr. King was told to any neighbor or relative?

22 A No, sir.

23 Q Is it proper to call people at work?

24 A We can do that if we are unable to reach the customer by  
25 their cell phone or their home number or any numbers that

1 they've given us. There is also a place for their place of  
2 employment number, that we can call there.

3 Q And in this case did Mr. King specifically asked to be  
4 called at work?

5 A To me he asked several times for me to call at work.  
6 Sometimes that was the best way to reach him, and especially  
7 if he was busy doing something with the funeral home.

8 Q And how do you remember that specifically, that he asked  
9 you to call him at work?

10 A Normally I will call a customer on their cell phone or  
11 their home phone. That's how we're trying to do. Those  
12 numbers are the first contact numbers that we try. I  
13 remember calling the place of employment because he worked at  
14 a funeral home, so I just remember calling that. It's  
15 something I remember.

16 Q He specifically asked you to call him at work?

17 A Yes, sir.

18 Q Many times?

19 A There were a few occasions. I mean I don't remember  
20 every instance but I do know that he was, he did ask, leave  
21 the phone number on my voice mail even a couple of times to  
22 call him at his work.

23 Q And did you find other instances in the file where he had  
24 asked other people to call him at work?

25 A I did see that, yes, sir.

1 Q There has been some testimony that people from Vanderbilt  
2 were ugly or hollering. Have you reviewed the call notes?

3 A Yes, sir.

4 Q Okay. And is it the policy to record and make a note of  
5 any complaint?

6 A Yes, sir.

7 Q And reviewing all of the complaints from all of the  
8 calls, how many complaints -- or reviewing all the notes for  
9 all the calls, how many of the complaints, how many  
10 complaints did you ever receive over seven years from  
11 Mr. Flores and Mr. King?

12 A The one instance where Mr. King called in to discuss, I  
13 think perhaps alternate payment arrangements, he did make  
14 mention of an account representative that he felt was rude to  
15 him when he called.

16 Q And the account representatives are trained to write down  
17 in the notes any complaints that are made?

18 A Yes, sir.

19 Q All right. And so if Mr. Flores or Mr. King had ever  
20 made a complaint, you would expect to find it?

21 MR. B. GUTIERREZ: Excuse me. Objection, leading,  
22 Your Honor.

23 THE COURT: Sustained.

24 BY MR. THAGARD:

25 Q All right. If Mr. Flores or Mr. King had ever called,



1 where would you expect to see a record of that?

2 A In our documentation from the events of a call, we would  
3 have to note pretty much what happened on each and every  
4 phone call.

5 Q And did you see any record of that?

6 A No, sir.

7 Q And over what period of time was that?

8 A Seven years that the loan was there, still there.

9 MR. THAGARD: Your Honor, may we approach?

10 THE COURT: Yes.

11 (Bench conference on the record)

12 MR. THAGARD: We would like again to tender a call  
13 note. They have brought them into the record by Mr. Flores  
14 and Mr. King combining -- or claiming that ugly calls were  
15 made, that they were treated poorly, and other, that there  
16 were many calls made and calls were made at work, and a --

17 THE COURT: That were related to her?

18 MR. THAGARD: Yes.

19 THE COURT: Overruled. Thank you.

20 MR. THAGARD: I've got one other request I'd like to  
21 make.

22 THE COURT: Or denied. Sorry.

23 MR. THAGARD: Okay. I would like to offer one note,  
24 the one note that was written by --

25 THE COURT: Any note that she took you can --

1 MR. THAGARD: I can get in?

2 THE COURT: You can talk about, yes, sir.

3 MR. THAGARD: Okay. And can I offer it into  
4 evidence? All of it is one note written by her on the lot  
5 36, that's all I ask for.

6 MR. B. GUTIERREZ: You see, they keep coming back to  
7 36 -- it wasn't even covered -- in order to --

8 MR. RUMLEY: And this is unrelated to their rebuttal  
9 of Flores. They want to get in this thing about supposedly  
10 the land was put up as collateral, and we went through this  
11 at --

12 THE COURT: Let me see it, let me see the note.

13 MR. THAGARD: Okay, I've got it here.

14 MR. RUMLEY: We went through this at length. You've  
15 got the same screen that they have?

16 THE COURT: This is my, I do all the lighting with  
17 this thing on, the computer switching, the VCR, everything  
18 for her. She has one also. This is the light outside, this  
19 is the light in you-all's. This is my screen that I can put  
20 on the same thing as yours. This is the note, I've got it up  
21 there.

22 MR. THAGARD: It's a note from July 14th. It's on  
23 the bottom there. It goes to the next page. It was written  
24 by Kim Russell. If you look at the very bottom, the last  
25 entry, and look at the next page, is the note.

1 THE COURT: The bottom --

2 MR. THAGARD: It's the next page.

3 MR. RANGEL: It's at the bottom and the next page.

4 MR. THAGARD: It's the part, see the Kim Russell one  
5 at the very bottom?

6 THE COURT: Uh-huh.

7 MR. THAGARD: And then it goes to the next page.

8 THE COURT: Okay. I think it's okay if you just use  
9 that to refresh her memory and let her testify about it.

10 MR. RUMLEY: But, Your Honor, we would object again  
11 under 403. They have already been through this. This is  
12 cumulative and this is, has nothing to do with rebuttal, to  
13 rebutting what, his evidence he put on. Nothing to do with  
14 it.

15 THE COURT: Mr. Rumley, it's only Mr. Gutierrez who  
16 can start objecting to this, but I'll listen to it. So I'm  
17 going to let them do that. Thank you.

18 (Bench conference ends)

19 MR. THAGARD: I would like to show the witness a  
20 document. May I approach the jury?

21 THE COURT: Yes.

22 MR. THAGARD: It's going to be CP10 at 361 and 360.  
23 Can you do that?

24 BY MR. THAGARD:

25 Q Ms. Russell, did you receive a call from Mr. Flores and

1 Mr. King --

2 MR. B. GUTIERREZ: Excuse me, Your Honor. We object  
3 to counsel asking questions that are outside our evidence,  
4 direct evidence from Mr. Flores.

5 THE COURT: Thank you. Overruled.

6 BY MR. THAGARD:

7 Q Did you receive a call from Mr. Flores and Mr. King on  
8 July 14th of 2003?

9 A Yes, sir.

10 Q And was that call made to you?

11 A Yes, sir.

12 Q Okay. And did you make records of that call?

13 A Yes, sir.

14 Q Do you -- can you please tell us again the substance of  
15 that call that you personally remember from Mr. Flores and  
16 Mr. King?

17 A He had told me at that time that he -- well, the initial  
18 purpose of the call was to let me know that the July payment  
19 had not been sent yet, so obviously we were going to make  
20 alternate arrangements for that payment. He then proceeded  
21 to ask me about refinancing the mobile home, what he needed  
22 to do in regards to that. He said that the sales center  
23 person, I guess his sales person told him that after a year  
24 he could refinance the loan and he had questions in regards  
25 to that, so he wanted to be instructed on how to go about

1 doing that.

2 Q And -- would like for you to pull up 360, please. And  
3 what did you, what was he specifically asking that you do to  
4 assist with the refinance?

5 A He wanted to know about releasing one of the lots that  
6 they had placed for, one of the pieces of property that they  
7 had placed for collateral on that loan. Not remembering  
8 every detail he wanted to know because they wanted to, I  
9 think, get it out of Mr. Flores' name and put it in someone  
10 else's, so they needed to know how they needed to go about  
11 getting that off of that loan itself.

12 Q And this was July of, July 14th of 2003?

13 A Yes, sir.

14 Q Okay. And did he tell you that they had put lot 30 --  
15 lot 35 and lot 36 on the loan?

16 A Yes, sir. There were two lots. He wanted to release  
17 only one of them, wanted me to find out what he would need to  
18 do to have that happen so that they could look into  
19 refinancing it.

20 Q Do you remember which lot specifically he wanted released  
21 from the loan?

22 A I think that it was 36 but I'm not really sure of the  
23 exact number. One of the two he definitely wanted off of the  
24 loan.

25 Q I want you to, I'll ask you to look at the document on

1 your screen and see if that refreshes your recollection?

2 A Yes, sir. He needed to get 35 released because it was in  
3 Cesar's name.

4 MR. THAGARD: That's all we have, Your Honor.

5 THE COURT: Thank you.

6 CROSS-EXAMINATION

7 BY MR. B. GUTIERREZ:

8 Q Let me make sure I understand what you've told, what  
9 you've told us, questions from Mr. Thagard. Did you say  
10 after you testified a few days ago that you went back and  
11 looked at all of the collection notes?

12 A I haven't looked at anything prior to leaving here on  
13 Friday. I, this was before I came down.

14 Q You have reviewed the collection, collection notes.  
15 That's what I have, you said reviewed the collection notes.

16 A Every page, sir.

17 Q Please, if you could, please direct us, so that we can  
18 maybe put it on the screen, to any collection note that you  
19 reviewed that shows that you called the Trevinos, the  
20 landowners that are involved in this lawsuit, that you called  
21 them to try to collect the debt from them.

22 A Sir, I wouldn't be collecting the debt from the  
23 landowner. If I had the number for the landowner, I would  
24 definitely be calling that number as well.

25 Q Well, I believe you have testified that you called

1 neighbors, you called employers, you called relatives. Can  
2 you please pull out so that we can see whether or not you  
3 ever called the Trevinos that their land had been pledged and  
4 that if they didn't make a payment for Mr. Flores or Mr. King  
5 they could lose their land? Do you have, can you publish any  
6 of those collection notes?

7 A They did not sign the retail installment contract so I  
8 would be contacting them about a payment. I still cannot  
9 release information to them about the loan, sir.

10 MR. B. GUTIERREZ: Objection, nonresponsive, Your  
11 Honor.

12 THE COURT: Listen to the question carefully,  
13 please --

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: -- and just respond to the question.  
16 Thank you, ma'am.

17 BY MR. B. GUTIERREZ:

18 Q Very simple. Can you pull out any collection note, can  
19 you pull out any collection note of all the -- because you  
20 said you reviewed every single page.

21 A Yes, sir.

22 Q I want you to pull out any collection note that you have  
23 where you didn't call a neighbor, you didn't call a relative,  
24 you didn't call an employer, you didn't call Mr. Flores, you  
25 didn't call Mr. King, but that you called the landowners to

1 tell them that their land was in jeopardy because Mr. Flores  
2 and Mr. King were defaulting, were in arrears, or had not  
3 paid on their contract.

4 A No, sir, I don't recall calling them at all.

5 Q Now, how is it that you can come in here and testify  
6 under oath this business about them wanting for you to  
7 release a lot because it was in Mr. Flores' name? Is that  
8 what you're telling this jury, that there was some land that  
9 was in Mr. Flores' name back in 2003, Ms. Russell?

10 A Yes, sir, that was the events of the call.

11 Q Can you please, can you please pull out that document  
12 that shows that Mr. Flores, that Mr. Cesar Flores owned any  
13 of that property?

14 A I don't have that document in front of me, sir. I'm just  
15 going on what he told me on the conversation.

16 Q Do you think it was right, do you think it was the right  
17 thing to do to keep it secret from Mr. Flores, from Mr. King,  
18 that these releases had been filed?

19 A Sir, I don't think it was kept secret.

20 Q Okay. Do you think it was right to continue collecting  
21 money from them after these releases were filed?

22 A Yes, sir, they owned the loan.

23 MR. B. GUTIERREZ: That's all I've got.

24 MR. THAGARD: Your Honor, may we approach?

25 THE COURT: Yes, sir.



1 (Bench conference on the record)

2 MR. THAGARD: I think they opened the door by cross-  
3 examining her on that note. I think we would offer that  
4 again, that note into evidence.

5 THE COURT: Overruled. Thank you, sir.

6 (Bench conference ends)

7 MR. THAGARD: We have nothing further. Oh, I do  
8 have one, one thing, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. THAGARD:

11 Q In your review of the file and the notes, is there any  
12 evidence that anyone from Vanderbilt ever called the Trevinos  
13 once, ever?

14 A Not that I recall, sir, no.

15 MR. THAGARD: No questions.

16 THE COURT: Thank you. You may stand down.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Call your next witness.

19 MR. RANGEL: Vanderbilt does not have any more  
20 witnesses on the --

21 THE COURT: All right.

22 MR. RANGEL: So we rest and close on the  
23 repossession and the defense of the counterclaim and we have  
24 a motion.

25 THE COURT: And you are preserving your same motions

1 at this time?

2 MR. SOLTERO: Your Honor, if we may approach  
3 briefly?

4 THE COURT: Yes.

5 (Bench conference on the record)

6 MR. SOLTERO: Your Honor, it's, we move, Your Honor,  
7 we move again for judgment as a matter of law on all claims.

8 THE COURT: So you have the same motion you just  
9 gave me before?

10 MR. SOLTERO: Yes, Your Honor. We have a separate  
11 filing that's --

12 THE COURT: Another one?

13 MR. SOLTERO: At the close of the evidence.

14 THE COURT: Thank you.

15 MR. SOLTERO: Which we will file electronically.

16 And I understand Your Honor wants us to argue it later  
17 because you're carrying them but we are prepared to argue  
18 now. All the elements of Wilder, counterclaims fail.

19 THE COURT: Thank you. I'll carry this forward.

20 (Bench conference ends)

21 THE COURT: Mr. Rumley?

22 MR. RUMLEY: Yes, Your Honor?

23 THE COURT: Do you have any witnesses?

24 MR. RUMLEY: Yes, Your Honor. Your Honor, we call  
25 Arturo Trevino.

1 ARTURO TREVINO, INTERVENOR'S WITNESS, SWORN

2 THE CLERK: Thank you. Please be seated.

3 DIRECT EXAMINATION

4 BY MR. RUMLEY:

5 Q Good morning, Mr. Trevino.

6 A Good morning, sir.

7 Q You testified a few days ago, and I want to talk to you a  
8 little bit this morning about your damages, and your damages  
9 that you are asking this jury to award, okay?

10 A Yes, sir.

11 Q One thing that, just to make sure we're clear, the  
12 documents, the deed of trust and the mechanic's lien  
13 contract, do you know when those were filed with respect to  
14 your property?

15 A When they were filed?

16 Q When they were filed. When the deed of trust and the  
17 mechanic's lien, do you know when they were filed? Do you  
18 know the date?

19 A Like, I don't, I don't know, I don't know what you're  
20 trying to tell me, sir.

21 Q The, you understand that the deed of trust, the  
22 mechanic's lien contract, the two documents --

23 A Yes, sir.

24 Q -- that you testified earlier that contained your forged  
25 signature, do you understand that those documents were filed

1 in 2002?

2 MR. RANGEL: Judge, I object to the form of the  
3 question.

4 THE COURT: Sustained.

5 BY MR. RUMLEY:

6 Q Do you understand, sir, that those were filed in 2002?

7 A Yes, sir.

8 Q You didn't find out that those documents had been filed  
9 related to your property until when, sir?

10 A 2009.

11 Q All right. Now, back in 2002 when these documents were  
12 filed, did you own lots 35 and 36?

13 A Yes, sir.

14 Q And did you own those lots along with Maria?

15 A Yes, sir, 50/50 on those, all that.

16 Q And I was going to ask you, how, was it 50/50 or how was  
17 that ownership broken down?

18 A We were 50/50 on it.

19 Q Okay. And through this case have you understood that the  
20 defendants have used that property with respect to filing  
21 these documents?

22 A Yes, sir.

23 Q Did you ever give Clayton Homes or Vanderbilt permission  
24 to use your property?

25 A No, sir.

1 Q Are you asking the jury to award you money for these  
2 defendants using your property without your permission?

3 A Yes, sir.

4 Q Through the course of this case -- let me show you  
5 Defendant's Exhibit 15 which is in evidence. Mr. Trevino,  
6 have you, have you learned through this litigation that these  
7 companies actually went and did an appraisal on your  
8 property?

9 A Yes, sir. Yes, sir.

10 Q Okay. And can you tell the jury what Clayton Homes  
11 appraised your property at?

12 A Twenty thousand.

13 Q All right. Now, you, when did you become aware that they  
14 filed these releases that we have been talking about for the  
15 last several days?

16 A Just recently.

17 Q Okay. Are you asking the jury to award, to award money  
18 to you for the defendants using your land from 2002 up until  
19 the time that they released those liens?

20 A Yes, sir.

21 Q And what amount of money are you going to ask, are you  
22 asking the jury to award?

23 A I'll leave it up, I'll leave it up to the jury to decide  
24 on that, sir.

25 Q Okay. All right, thank you, sir.

1 MR. RUMLEY: Pass the witness.

2 CROSS-EXAMINATION

3 BY MR. RANGEL:

4 Q Good morning, Mr. Trevino.

5 A Good morning, sir.

6 Q You and Mrs. Trevino owned lots 35 and 36 because those  
7 lots had been given to both of you by Mrs. Trevino's late  
8 sister and brother-in-law, correct?

9 A Correct, sir.

10 Q And in July of 2003, July 24th, 2003, you and  
11 Mrs. Trevino conveyed to Gilberto Flores, Mrs. Trevino's  
12 brother, lot 35, correct?

13 A Correct.

14 Q So as of July 2003 you and Mrs. Trevino no longer owned  
15 lot 35, correct?

16 A Correct, sir.

17 Q Then, in April of 2005 you and Mrs. Trevino conveyed to  
18 Cesar Flores lot 36, correct?

19 A Correct.

20 Q So as of April 2005 you and Mrs. Trevino did not own lot  
21 36 or lot 35, correct?

22 A Correct.

23 Q Now, you are aware, Mr. Trevino, are you not, that these  
24 releases that you've been hearing about throughout the trial  
25 were filed in October of 2005, correct?

1 A Correct.

2 Q About the time, at the time that those releases were  
3 filed, you and Mrs. Trevino didn't own those lots, correct?

4 A Correct, sir.

5 Q And you heard Mr. Rumley ask you about the original deed  
6 of trust and builder's and mechanic's lien that were involved  
7 with the purchase of the mobile home by Cesar Flores and  
8 Alvin King, correct?

9 A Correct.

10 Q And the evidence has shown that those were filed, the  
11 deed of trust and builder's and mechanic's lien were filed in  
12 January of 2002, correct?

13 A Correct.

14 Q Between January of 2002 and the time that you conveyed  
15 lot 35 to Gilbert Flores in July of 2003 and the time that  
16 you conveyed lot 36 to Cesar Flores in April of 2005, you and  
17 Mrs. Trevino never attempted to sell those two lots to  
18 anybody else, correct?

19 A Correct.

20 Q And you never attempted to convey those lots to anybody  
21 else, correct?

22 A Correct.

23 Q When you and Mrs. Trevino decided that you wanted to  
24 convey lot 35 to Gilberto Flores, you were able to do that,  
25 correct?

1 A Correct.

2 Q The deed of trust and the builder's and mechanic's lien  
3 that were on file did not keep you from doing that, correct?

4 A Correct.

5 Q Same thing, when you and Mrs. Trevino decided to convey  
6 lot 36 to Cesar Flores in April of 2005, you were able to do  
7 that, correct?

8 A Correct.

9 Q The deed of trust and the builder's and mechanic's lien  
10 that were on file did not keep you from doing that, correct?

11 A Correct.

12 Q And you understand, Mr. Trevino, that the deed of trust  
13 and the builder's and mechanic's lien were on file in order  
14 to help Cesar Flores and Alvin King to purchase their mobile  
15 home, correct?

16 A Yes, sir, but I never, I never signed the, signed it  
17 over.

18 Q I understand, and I was going to follow that up. And I  
19 understand that your position is that you and Mrs. Trevino  
20 never signed the deed of trust and the builder's and  
21 mechanic's lien, correct? Correct?

22 A Correct, sir.

23 Q But you do understand that they, the reason that they  
24 were on file was in connection with the purchase of a mobile  
25 home by Cesar Flores and Alvin King, correct?



1 A Well, without my permission.

2 Q I understand that, but that was the reason that they were  
3 on file?

4 A Yes, sir.

5 Q In other words, they were on file in order to try to help  
6 Mr. Flores and Mr. King buy the mobile home, correct?

7 A Correct.

8 Q And it is true, is it not, Mr. Trevino, that, your  
9 testimony is that the first time you found out about the  
10 builder's and mechanic's lien, the deed of trust and the  
11 releases, was in, when you went to see Mr. Gutierrez in the  
12 fall of 2009, correct?

13 A Correct.

14 Q And the reason you went to see Mr. Gutierrez is that  
15 Mrs. Trevino called you and told you to go see Mr. Gutierrez,  
16 correct?

17 A Correct, sir.

18 Q And it's your understanding that the reason that  
19 Mrs. Trevino went to see Mr. Gutierrez is that Cesar Flores  
20 had called her to go see Mr. Gutierrez, correct?

21 A I guess so. I'm not sure.

22 Q When you say that you are seeking damages for the use of  
23 that property, the property was used -- and I know you  
24 disagree with the term, you didn't sign, but the property was  
25 used by Mr. Flores and Mr. King to be able to buy a mobile

1 home, right?

2 A That's correct.

3 MR. RUMLEY: Your Honor, objection, this calls for  
4 speculation from this witness. He doesn't know --

5 MR. RANGEL: Well, he --

6 MR. RUMLEY: -- why these defendants filed these  
7 documents.

8 MR. RANGEL: Judge, this is cross-examination. He  
9 has heard the testimony and Mr. Rumley was asking him about  
10 using the property. The fact of the matter is it was used in  
11 order to buy the mobile home. Vanderbilt or CMH Homes did  
12 not use it, it was Mr. Flores and Mr. King.

13 MR. RUMLEY: Same objection.

14 THE COURT: Overruled.

15 MR. RANGEL: May I re-ask the question, Your Honor?

16 THE COURT: Yes.

17 BY MR. RANGEL:

18 Q Mr. Trevino, it is your understanding that the property,  
19 lots 35 and 36, were used in order to enable Mr. King and  
20 Mr. Flores to purchase the mobile home, correct?

21 A Correct.

22 Q And it is true, is it not, Mr. Trevino, that no one  
23 from -- you had never had any contact with anybody from  
24 Vanderbilt in connection with the debt that was owed by  
25 Mr. King and Mr. Flores, correct?

1 A Correct.

2 MR. RANGEL: Pass the witness, Your Honor.

3 MR. B. GUTIERREZ: I have no questions, Your Honor.

4 MR. RUMLEY: No further questions, Your Honor.

5 THE COURT: Thank you. You may stand down. Call  
6 your next witness.

7 MR. RUMLEY: We call Janet Masson.

8 THE CLERK: Would you come forward, please.

9 JANET MASSON, INTERVENOR'S WITNESS, SWORN

10 THE CLERK: Would you have a seat, please, and watch  
11 your step.

12 DIRECT EXAMINATION

13 BY MR. RUMLEY:

14 Q Ma'am, could you introduce yourself to the ladies and  
15 gentlemen of the jury?

16 A Yes. My name is Janet Fenner Masson.

17 Q And, Ms. Masson, can you tell them, what's your  
18 occupation?

19 A I am a forensic document examiner.

20 Q And what does a forensic document examiner do?

21 A We examine documents to answer questions about their  
22 physical composition. Sometimes we are called handwriting  
23 experts because a lot of what we do is examine handwriting to  
24 identify who wrote it or to determine whether it was not  
25 written by the person who wrote samples of known handwriting.

1 We examine signatures, cursive writing, hand printing,  
2 handwritten numerals and that sort of thing for  
3 identification purposes. But we also examine papers and  
4 photocopy processes and printing processes and papers and  
5 inks and all sorts of other aspects of the document to  
6 determine how it was made and, you know, when, sometimes,  
7 some instances, when it was made and what processes it may  
8 have been through in its manufacture.

9 Q And what type of training have you received in order to  
10 do that document examination?

11 A As a background for the profession, I have a bachelor's  
12 degree from the University of Texas at Austin. Then I served  
13 an internship under a well known expert in the field, Lucille  
14 P. Lacey, who was a document examiner in Houston for many  
15 years. My internship consisted of two years of full-time  
16 on-the-job training under Ms. Lacey. I never learned to call  
17 her Lucille, it was always Ms. Lacey. And then I continued  
18 to work with her as her associate and finally as her partner  
19 for an additional six years, all that time really continuing  
20 to train with her. Then, in, after eight years I opened my  
21 own practice and that's, that was in 1985, so that was about  
22 25 years ago.

23 Q And are you a member of any professional organizations?

24 A Yes, sir, I am.

25 Q And which ones?

1 A I'm a member of the American Society of Questioned  
2 Document Examiners, which is a national organization of,  
3 strictly of document examiners in the U.S. and Canada,  
4 although we have international members as well, corresponding  
5 members they're called. And then I'm also a fellow in the  
6 American Academy of Forensic Sciences in the questioned  
7 document section. That's an organization, a much larger  
8 organization that includes medical examiners, pathologists,  
9 you know, the odontologists who are the dentists who will  
10 identify bodies from teeth and that sort of thing,  
11 criminalistics section, toxicology which examines blood and  
12 body fluids to determine composition, look for poisons and  
13 drugs and that sort of thing. But it also includes a  
14 questioned document section. That's forensic document  
15 examiners.

16 Q Okay. And explain to us what, how the questioned  
17 document section, how that is specialized within that group.

18 A In each of the sections of the Academy you have to have  
19 specific kinds of training and education in order to qualify  
20 to be a member of that organization. In order -- or of that  
21 section. In the Academy, to be a member of the questioned  
22 document section you have to have had training and experience  
23 in the identification of handwriting and other aspects of  
24 documents. There are some other people who do some work with  
25 documents but they don't do the handwriting aspect, and those

1 generally go into criminalistics. Those are, for instance,  
2 people who specialize in doing chemical testing of inks and  
3 photocopier toners and that sort of thing. That's  
4 principally the group that will go into criminalistics  
5 because they haven't, they are not the full spectrum document  
6 examiners, and particularly they don't examine handwriting is  
7 the thing that is generally missing.

8 Q And in the American Academy of Forensic Science, are you  
9 in the questioned document section?

10 A Yes, sir, I am.

11 Q During the course of this case did you come to understand  
12 that Clayton Homes has hired a guy named Larry Stewart?

13 A Yes, Mr. Stewart.

14 Q And is Mr. Stewart in this American Academy of Forensic  
15 Science?

16 A Yes, I believe so.

17 Q Is he in the questioned document section?

18 A No, he's an ink chemist. He's in the criminalistics  
19 section.

20 Q All right. And if an individual is experienced in  
21 handwriting analysis, comparing signatures, what section of  
22 the American Academy would they fall under?

23 A They would go into questioned documents.

24 Q All right. Are you certified by any organization?

25 A Yes, sir.

1 Q Which organization?

2 A The American Board of Forensic Document Examiners. I  
3 took their examination in 1983 and have been certified  
4 continuously since then.

5 Q And what does that mean to be certified by that  
6 organization?

7 A In order to meet the requirements for certification you  
8 must first have a bachelor's degree from a recognized  
9 university. Then you must undergo a minimum of a two-year  
10 full-time training program under someone who -- in a  
11 recognized laboratory or under a recognized document  
12 examiner. You also must do the full range of document  
13 examinations. And then, after that time period, you must  
14 continue to work in the field for at least two years  
15 additionally, that time being under the supervision of  
16 someone who reviews all of your casework to make sure that  
17 you are working in a professional manner and that you are  
18 coming to the right conclusions about what you examine. You  
19 have to have testified in court by this time and you have to  
20 then apply for review by the board, the board of directors,  
21 and they, and provide letters of recommendation about, by  
22 people who know your work. Then they, if you pass that level  
23 then you will go into the testing process which includes  
24 completion of a, successful completion of a written, oral and  
25 practical board examination. Then, once you have

1 successfully completed all of those, the board will determine  
2 whether you can become certified.

3 Q And are you board certified?

4 A Yes, sir, I am.

5 Q And how long have you been board certified?

6 A Since 1983.

7 Q Over the course of your career have you given  
8 presentations on the subject of handwriting analysis?

9 A Yes, all -- and various aspects of document examination.

10 Q And if we look at -- I have marked your resume as Exhibit  
11 491 that's in evidence. If we look, there's a number of,  
12 there's a number of professional activities, ma'am, that's  
13 listed on your resume. Can you tell us which ones are  
14 related to the work that you have done in this case?

15 A Well, a lot of these are things that are essentially  
16 serving on committees or boards of organizations. For  
17 instance, the top one, I was a member of the evaluation and  
18 testing committee for the American Society of Questioned  
19 Document Standards. In order to become a regular member of  
20 that organization, you now have two ways you can do it, but  
21 one of the ways is to go through a testing procedure, so I  
22 was on the committee that evaluated the results of tests by  
23 various people who were wanting to become regular members.  
24 The second one was an award that I received. The third one,  
25 I was Associate Editor of Forensic Science International,



1 which meant that I reviewed a lot of articles that were  
2 submitted for publication. The Executive Committee of the  
3 American Academy was more a bureaucratic job, if you want to  
4 call it that.

5 Q And then it looks like that you served as an officer for  
6 the American Board of Forensic Document Examiners?

7 A Yes, I was a director on that board for six years. I  
8 served as the secretary and the president of the  
9 certification board for the profession.

10 Q In your resume there's a number of articles and  
11 professional papers that you have written. Do any of those  
12 deal with the type of work that you did in this case?

13 A Yes, sure.

14 Q And is there any one, any article in particular that  
15 relates to the type of work that you did in this case?

16 A Well, there were a couple of them. One of them had to do  
17 with determining the possibility, in a case that was a, where  
18 a signature was determined to be a tracing or a simulation,  
19 whether you could determine who actually did that tracing or  
20 simulation. So that was something that I think relates to  
21 this case. I've done studies of signatures written in  
22 awkward writing positions and under usual, unusual  
23 circumstances, such as writing, signing a signature, for  
24 instance, on the hood of a car, or when you have just  
25 something rolled up in your lap and you're signing it.

1 Occasionally we will get cases where, for instance, there's a  
2 request for money, a check endorsed while someone is at the  
3 drive-in bank, you know? A lot of people don't really have  
4 something to sign on, so they may just sign on an odd writing  
5 surface. So I have done, that is, talked about unusual  
6 circumstances of signing signatures. I have done signatures,  
7 studies of signatures written with different writing  
8 instruments, so that can be something involved in this case.  
9 You know, just all sorts of cases involving not only  
10 microfilm and handwriting and photocopying processes and  
11 signatures, probably a lot of them are on signatures  
12 themselves. But --

13 Q And --

14 A -- I've done all sorts of research.

15 Q And you have an office in Houston, Texas, is that right?

16 A Yes, sir.

17 Q And do you have any type of special laboratory equipment  
18 that you use when you do handwriting analysis?

19 A Yes.

20 Q And what type of equipment do you have in your office and  
21 what type of equipment do you use when you're examining  
22 handwriting?

23 A Well, one of the first things we use, of course, is a  
24 microscope. I mean we use our eyes, unaided eyes, but we  
25 also use microscopes and various magnifying devices. We use

1 a video spectral comparator, which is used for essentially  
2 comparing inks. It uses the infrared spectrum of light and  
3 it also uses ultraviolet light, depending on which spectrum  
4 you're looking at. That can be used to compare papers  
5 particularly, or look for chemical erasures and stains and  
6 things on documents. I use electrostatic detection  
7 apparatus. It's a, my particular one is a Foster & Freeman  
8 manufactured piece of equipment that detects indentations in  
9 the paper. For instance, if you have a pad of paper and you  
10 write on the top sheet, well, if the top sheet is missing, a  
11 document examiner can process the second or third or fourth  
12 sheet down a lot of times and determine what was written on  
13 that earlier sheet. It uses electrostatic imaging to create  
14 an image of the underlying, of the indentations into the  
15 page. I use all sorts of measuring devices for looking  
16 particularly at typewriting. I use lighting sources for  
17 looking -- grazing light. That's another way of looking at  
18 the indentations in the paper to see what those indentations  
19 might be of. I use transmitted light to look for, say,  
20 watermarks in paper, look for the presence of staple holes.  
21 Use grazing light also on the back of a document to look at  
22 how heavy the pressure was in writing. So, I use typewriter  
23 test plates that are checking alignment of typing and  
24 printing processes.

25 Q And you were hired by my firm in this case, correct?

1 A Yes, sir.

2 Q And what were you asked to do?

3 A I was asked to examine some signatures on various  
4 documents that were submitted and to determine whether each  
5 of the signatures was written by the same person who wrote  
6 samples of a known signature of that person.

7 Q And did you use standardized methodology that's accepted  
8 in your field of document examination?

9 A I did, yes.

10 Q Two of the documents that you looked at, you looked at  
11 the original builder's and mechanic's lien contract?

12 A Yes, sir, I did.

13 Q And you also looked at the original deed of trust?

14 A Yes, sir.

15 Q When did you, when did you examine those documents?

16 A I first made an examination of photocopies back in the  
17 summer, and then October 11th the two original documents were  
18 brought to my office and I examined them at that time.

19 Q And can you explain to the jury what you did when you  
20 examined those documents?

21 A Well, when I examined the originals, of course, what I  
22 did was examine them with the unaided eye and through the  
23 microscope. I made high quality scanned images of all of the  
24 documents. I examined them with grazing light and with  
25 transmitted light to look for things like watermarks and to

1 look for indentations into the documents. I processed most  
2 of them with electrostatic imaging, particularly when I saw  
3 any evidence that there might be some indentations into the  
4 paper. I examined those with electrostatic imaging. I  
5 examined pretty much all of the handwriting on the documents  
6 with a microscope. I compared some inks with the video  
7 spectral comparator. And I think that's pretty much what I  
8 did.

9 Q And as a result of your examination of the deed of trust  
10 and the builder's and mechanic's lien contract, did you  
11 arrive at an opinion with respect to the signatures appearing  
12 on there of Maria Trevino and Arturo Trevino?

13 A Yes, I did.

14 Q And can you explain to the jury what your opinion is?

15 A Yes. In my opinion the Maria M. Trevino signature on the  
16 builder's and mechanic's lien in question and on the deed of  
17 trust, neither one of those signatures was written by the  
18 same person who wrote known samples of the known signature of  
19 Maria M. Trevino that were provided to me. And with regard  
20 to the Arturo Trevino signature, it's also my opinion that  
21 the Arturo signature, Arturo Trevino, excuse me, signatures  
22 on those two documents were not written by the same person  
23 who wrote the known signatures of Arturo Trevino on samples  
24 of known signatures of Mr. Trevino.

25 Q And, Ms. Masson, did you create a chart that describes

1 the variances and the things that you saw in your examination  
2 to help explain your opinion?

3 A I prepared some illustrations that can be used to  
4 illustrate to the jury what I found and the reasons for my  
5 opinion.

6 Q All right. Let me show you what's been entered into  
7 evidence, Exhibit 487, and if you can, if you can explain,  
8 explain what this document shows and how this demonstrates  
9 your opinions with respect to Maria Trevino.

10 A Yes, sir. At the top -- see if this will -- there we go.  
11 The first two signatures, the first one is the Maria M.  
12 Trevino signature on the builder's and mechanic's lien  
13 contract. The second one is the signature on the deed of  
14 trust. Then below that are illustrated samples of genuine  
15 signatures of Ms. Trevino, on answers to interrogatories, on  
16 a driver's license, on some checks, and I believe this one  
17 right here, the, one, two, three, four, fifth one down is on  
18 another deed of trust. So this is a sample of her genuine  
19 signatures written over time, and they were all written in  
20 the normal course of business, so they give an example of  
21 what her signature looks like in general.

22 Q And how do you use these signatures in relation to  
23 looking at the two signatures in question to determine  
24 whether or not those are genuine or not?

25 A Well, the first thing we do is look at her genuine

1 signatures to see what the range of variation is and how it  
2 is that she signs her name. No one will sign their signature  
3 in exactly the same way twice. They will not -- we're not  
4 machines and so it will not be exactly the same, there will  
5 be variations from one to the next, but you will have a  
6 pattern to the way that you sign your name. So what I look  
7 at is see what that pattern is and see what the features are  
8 that are in her natural signature. And then I look at the  
9 signatures that are in question, examine them through the  
10 microscope and with the unaided eye, and compare the features  
11 in those signatures with the samples of genuine signatures to  
12 determine whether the signatures in question are within the  
13 range of variation found in her genuine signature or outside  
14 of that range of variation. The features that we look at are  
15 not only the writing design of the letters but also the  
16 writing quality. And the writing quality is really key in  
17 this case because the natural signatures of Ms. Trevino are  
18 written with a lot of speed, they have tapered beginning and  
19 ending strokes, there's a lot of spontaneity to the  
20 signatures. And that's definitely in contrast to the  
21 signatures in question which are very slowly drawn, they're  
22 slow, hesitant signatures.

23 Q And if we look at the signature that appeared on the deed  
24 of trust, can you use your pointer and point out what you're  
25 talking about when you're noting these variances?

1 A Well, first, if you look at the signatures, at first  
2 glance they look somewhat like the style or design of the  
3 genuine signatures. That tells me that they are, that either  
4 the signatures are genuine or they are someone's attempt to  
5 make it look like a genuine signature. That's what we call a  
6 simulation. That is someone is trying to copy a genuine  
7 signature. When you look in these known signatures, in the  
8 known signatures, though, you find certain features that  
9 appear over and over again that are different in the  
10 questioned signatures. One of the things, for instance, is  
11 the design of the letter T in the name Trevino. You can see  
12 the shape of the bottom of the letter T is quite different  
13 from the shape of the bottom in the genuine letters T. Now,  
14 in this instance, on this check, which is the fourth  
15 signature down, you can see that she uses a printed form of T  
16 rather than a cursive form of T. But otherwise, when she  
17 uses a cursive form of T, it has a different design to the  
18 bottom than you find in the genuine signatures. If you also  
19 look at the R-E-V portion of the signatures in question, they  
20 are really nothing like the design of the R-E-V portion in  
21 the known signatures of Ms. Trevino. If you look at this  
22 part that I have highlighted right here in the R, it looks  
23 like a misinterpretation of the person who was trying to copy  
24 the signature. It almost looks, in the questioned signature  
25 on the builder's and mechanic's lien, like a letter C.



1 Ms. Trevino does not make that design at all in her writing  
2 of the name Trevino. And also, in the ending of the V here  
3 is not like Ms. Trevino makes it. In addition, if you look  
4 at the Maria, the ending A in the deed of trust is not like  
5 the samples found in the known signatures where she has an A  
6 that's actually closed on the right side, or almost closed.  
7 It is clearly understandable as a letter A. If you look at  
8 the one in question, the writer didn't complete that letter  
9 A, it didn't go up and close the letter A. So there are some  
10 subtle features in the writings that are not like as found in  
11 the known signature of Ms. Trevino, but even more key is the  
12 writing quality. And I have an enlargement that we'll show  
13 in a second that shows the signatures in question and what is  
14 so remarkable about the writing quality, the speed with which  
15 the writing is executed.

16 Q Let me show you Exhibit 488 which is in evidence, and can  
17 you explain, explain to the jury what you mean by writing  
18 quality and how that demonstrates that these are not the  
19 signatures of Maria Trevino?

20 A Yes. When Ms. Trevino writes her signature it's written  
21 with a lot of spontaneity and a lot of speed. The pen is  
22 moving very quickly, very rapidly. Signatures, when people  
23 write signatures it's almost an unconscious act. You just,  
24 you just scrawl out a signature, you know, and it's a  
25 habitual pattern. Most people are not even familiar with

1 exactly what goes into it, they just know how to write it,  
2 and it's a very quick pattern. In these signatures, though,  
3 and particularly in the signature on the deed of trust, it is  
4 a very slow, hesitant drawn signature. If you look at it --  
5 and both of these, first, at the top of this letter R here,  
6 you can see there's a stop of the pen right there, like the  
7 person stopped and wasn't quite sure what to do and then went  
8 back and finished the R. You will notice in the A down here  
9 there is a very odd bobble in the writing position or the  
10 writing movement. And on the signature down here you can see  
11 the starts and the stops are very blunt. The pen is not  
12 moving quickly and coming off the paper at a rapid speed.  
13 You look at this portion right here, this is a very slow,  
14 deliberate movement. It is not, cannot be interpreted as an  
15 R-E-V, which is what it's supposed to be. I believe whoever  
16 was trying to copy this just was trying to follow some sort  
17 of line and misinterpreted what is in there. The same thing  
18 in this area. This is a very odd design that is not like you  
19 find in the genuine signature of Ms. Trevino. And the ending  
20 of the Trevino, right through here you can see the very blunt  
21 ending here where the pen just stops in the paper and the ink  
22 kinds of spreads into the paper fibers, because the movement  
23 is so slow and so deliberate. So this is, in my opinion,  
24 evidence that these signatures were written by somebody who  
25 was trying to kind of copy a genuine signature, not very

1 successfully. But these signatures and, of Ms. Trevino are,  
2 just on the face --

3 THE COURT: Would you remove that arrow, whoever has  
4 got the arrow there.

5 MR. RUMLEY: It might be --

6 THE COURT: She's using a little red dot.

7 THE WITNESS: I'm using a red dot, yes. I'm sorry.

8 THE COURT: Okay, go ahead.

9 MR. RUMLEY: I don't know how to --

10 THE WITNESS: Maybe if I hit clear, will that --

11 THE COURT: It should.

12 MR. RUMLEY: Is there a mouse? It could be a mouse.

13 THE COURT: It's -- thank you.

14 MR. RUMLEY: Thank you.

15 BY MR. RUMLEY:

16 Q All right. So let me, let me see if I get what you're  
17 saying, is typically when someone signs their name, you're  
18 signing your name and it's a fluid type movement?

19 A Yes, a very spontaneous movement.

20 Q And if someone is trying to copy someone's signature,  
21 it's more of a slow and deliberate movement because you're  
22 trying to copy something that you're not used to signing. Is  
23 that a fair assessment?

24 A In most cases, yes, that's correct. It will be a drawn  
25 appearance. And it's almost like they're doing a connect-

1 the-dot picture. If you remember when you were a kid and you  
2 would go from dot 1 to dot 2 to dot 3 to draw something out,  
3 that's sort of what happens a lot of times when someone is  
4 trying to simulate or copy someone else's signature. And all  
5 of the research has shown that when someone is trying to copy  
6 someone else's signature, they either will have flaws in the  
7 design of the writing, that is, they'll have the letters  
8 wrong, or they will have to slow down to a great degree to  
9 try to copy the writing as someone else does it. And  
10 typically you will have defects in both of them. Not only  
11 will it be more slowly written but also you will have letter  
12 designs that aren't quite right. And that's what you have in  
13 this case. At first blush, from a distance, without any sort  
14 of microscopic examination, it may look sort of like a  
15 genuine signature, but then when you get into the details  
16 there are numerous differences in the features of the  
17 writing, that is, the design of letters, but also, these are  
18 very slow written, deliberate signatures that even on the  
19 face of them should call into question the authenticity of a  
20 signature because they are not good, they are not fluent  
21 signatures.

22 Q And as a document examiner, are there different levels of  
23 certainty in which you reach an opinion about whether or not  
24 the signature is authentic or not?

25 A Yes.

1 Q And can you explain to the jury what those levels are and  
2 explain what your level of certainty is with respect to your  
3 opinion of the Maria Trevino signatures on these two  
4 documents?

5 A Yes, sir. Essentially, document examiners, the ASTM  
6 standard for the expression of opinions about handwriting are  
7 on a nine-point scale, the middle of that scale being no  
8 conclusion, meaning I can't determine whether the signature  
9 is by this person or is not. And we sometimes have to say I  
10 don't know whether they wrote it or not. Then on either side  
11 of that you go to indications, indications that the signature  
12 was written by the person or indications that they were not.  
13 That typically is a very low level of certitude. That's a  
14 level that's just saying I think the evidence is slightly  
15 more persuasive one way than another but it's just not -- and  
16 a lot of times it's not even considered to be more likely  
17 than not, it's just some features that may put us on one side  
18 or the other of no conclusion. The next level is probable.  
19 That's saying that the signature probably is by this person  
20 or probably is not by this person. Typically, there is some  
21 limit to the conclusion. Either you may not have all of the  
22 letters of the signature -- for instance, if I'm looking at a  
23 signature of someone whose name is Mary Smith and all of the  
24 samples of genuine signatures I have are of her writing Mrs.  
25 Carl Smith, then I may not know how she would write the name

1 Mary, but the Smith is so consistent with hers or so  
2 different that I have an opinion that it's likely genuine or  
3 probably genuine or probably not genuine. The next level is  
4 highly probable. That is a, that is an opinion that is a  
5 very strong opinion. And there may be some slight concern  
6 but it's essentially a very strong opinion that either the  
7 signature is genuine or is not genuine. And then there's the  
8 level of definite, a definite opinion saying I have no  
9 reservation about the opinion, the opinion is, the evidence  
10 is very persuasive that this is the correct answer. In this  
11 case my opinion is definite that these signatures were not  
12 written by the same person who wrote the known signatures of  
13 Ms. Trevino.

14 THE COURT: Okay. This is lunch break. We will  
15 come back at 1:15. Would you please stand for the jury.

16 (Jury exits at 12:15 p.m.)

17 THE COURT: You can stand down. Thank you.  
18 Anything to take up? Okay.

19 MR. RANGEL: Just in terms of I guess scheduling for  
20 this afternoon, Your Honor, in terms of --

21 THE COURT: Well, how many more witnesses do we  
22 have?

23 MR. RANGEL: Ms. Masson and then Maria Trevino and  
24 then we will have Kimball by deposition and Larry Stewart,  
25 our handwriting expert.

1 THE COURT: So we will finish today?

2 MR. RANGEL: Yes.

3 THE COURT: And then we will start a charge  
4 conference when we are done, and we will tell the jury to  
5 come back at 1:00 o'clock tomorrow, and we may need to go  
6 back tomorrow morning as well to talk about the charge. Or  
7 not. We'll see how we do today.

8 MR. RANGEL: I think that works.

9 MR. LOCHRIDGE: I think that's a good plan, yes,  
10 Your Honor. I vote for that.

11 THE COURT: You vote for that? This is not a  
12 democracy.

13 MR. LOCHRIDGE: I know it's not.

14 THE COURT: Okay. One time only.

15 MR. LOCHRIDGE: But it's South Texas, I got to vote  
16 on a couple of --

17 THE COURT: I let you, that's true, early and often.

18 MR. RUMLEY: He voted for the wrong one.

19 MR. LOCHRIDGE: Early, often, and --

20 THE COURT: All right. We will start back then,  
21 tomorrow at 1:00. It will give you-all time to organize your  
22 closing arguments and exchange any PowerPoints you want to  
23 use during closing.

24 MR. RUMLEY: How long are we going to get?

25 THE COURT: I had said an hour. Is that enough?

1 MR. LOCHRIDGE: I think that's fine, Your Honor.

2 THE COURT: Mr. Rumley?

3 MR. RUMLEY: Yes, Your Honor.

4 THE COURT: Mr. Gutierrez?

5 MR. J. GUTIERREZ: Yes.

6 MR. RANGEL: They're going to split the hour and  
7 we'll split the hour also.

8 THE COURT: Okay.

9 MR. RUMLEY: I didn't ask, but --

10 MR. RANGEL: No.

11 THE COURT: All right. Then I will see you-all back  
12 at 1:15. Has anybody emailed us the redline charge thing?

13 MR. SOLTERO: No, Your Honor. What, I thought I  
14 could do it from here but I can't, so I'm going to go back  
15 during lunch hour --

16 THE COURT: Okay.

17 MR. SOLTERO: -- and do not only ours but also  
18 Mr. Gutierrez's.

19 (Lunch recess at 12:17 p.m. until 1:29 p.m.)

20 THE COURT: Ready?

21 MR. GUTIERRIEZ: Yes, Your Honor.

22 THE COURT: Can I bring the jury in or is there  
23 anything --

24 (Court conferring off the record with clerk)

25 THE COURT: Would you bring in the jury. Do we



1 have -- Mr. Padilla?

2 THE MARSHAL: Yes, Your Honor.

3 THE COURT: Thank you.

4 (Jury enters at 1:30 p.m.)

5 THE COURT: Thank you. You may be seated.

6 MR. RUMLEY: May I proceed, Your Honor?

7 THE COURT: Please.

8 JANET MASSON, INTERVENOR'S WITNESS, RESUMES STAND

9 DIRECT EXAMINATION CONTINUES

10 BY MR. RUMLEY:

11 Q Ms. Masson, before we left, before the lunch break we  
12 were talking about the signatures of Maria Trevino on the  
13 builder's & mechanic's lien contract and the deed of trust,  
14 and I believe that you were talking about the different  
15 levels of certainty. And with respect to the signatures that  
16 appear on the builder's and mechanic's lien contract and the  
17 deed of trust, can you tell the jury what your level of  
18 certainty is as to whether or not those are the signatures,  
19 genuine signatures of Maria Trevino?

20 A My opinion is, expresses a definite opinion. That's the  
21 highest level of certitude that we have.

22 Q And what is your definite opinion?

23 A It's my definite opinion that the Maria M. Trevino  
24 signatures on the deed of trust and the builders and  
25 mechanic's lien contract in question in this matter were not

1 signed by the same person who wrote the known signatures of  
2 Maria M. Trevino.

3 Q All right. I want to move now to the signatures of  
4 Arturo Trevino that appear on the builder's and mechanic's  
5 lien contract and the deed of trust, and we're looking at  
6 Exhibit 489 which has been admitted into evidence, and can  
7 you go through this with us, ma'am, like you did with Maria  
8 Trevino and tell us how you arrived at your opinion?

9 A Yes. Illustrated on this exhibit at the top is the  
10 Arturo Trevino signature on the builder's and mechanic's lien  
11 contract. The second one is the deed of trust that's in  
12 question. Below that is a sampling of genuine signatures for  
13 Arturo Trevino that were provided to me, some of which were  
14 written on documents in the normal course of business and  
15 some of them, these last three signatures were signatures  
16 that he wrote during his deposition at the request of the  
17 attorneys. And in this case, as in the Maria Trevino  
18 signature case, the signatures in question, especially that  
19 on the deed of trust, were very slowly and deliberately  
20 written. As I say, it's more pronounced on the deed of trust  
21 than it is on the builder's and mechanic's lien. But in  
22 comparing these signatures to the genuine signatures of  
23 Mr. Trevino I found, first, a difference in the writing  
24 spontaneity and the writing quality. That is, the  
25 signatures, the known signatures were written with a lot of

1 speed, a lot of spontaneity, without hesitation. You can see  
2 a lot of times when he ends the signatures there's a very  
3 rapidly written flourish here. It goes over, presumably to  
4 go over and kind of appear as an I dot on the name Trevino,  
5 but there's this big flourish at the end and so there's a lot  
6 of speed there. And the questioned signatures you don't find  
7 that level of speed. But then also, if you look at them,  
8 Mr. Trevino writes sometimes with a traditional cursive form  
9 of the letter A in Arturo and sometimes with a printed form  
10 of A. We saw that with Ms. Trevino when she used the cursive  
11 form of T but then one instance where she used a printed  
12 form. That's a very common sort of variation that a lot of  
13 people will have in their signatures. In the signatures in  
14 question they are both with this cursive form, I mean, I'm  
15 sorry, the hand-printed form, but you'll see typically when  
16 Mr. Trevino has the printed form, the two letters are, the  
17 sides of the letter A are essentially parallel to each other.  
18 They -- or sometimes they are a little bit tented. That is,  
19 they are a little bit farther apart at the bottom than they  
20 are at the top. In this signature at the top -- oops, I hit  
21 the wrong button on my pointer. There you go. It's wider at  
22 the top than it is at the bottom. And then also, if you look  
23 at the name Arturo, the top signature doesn't have a crossbar  
24 of the letter T. That's not something that this writer  
25 leaves off of his signature. And in fact, when he writes the

1 letter T, as can be seen -- I'm not getting my pointer to  
2 work -- as can be seen on the third signature down, he writes  
3 the word, the A-R-T, and then he crosses the T and goes over  
4 and makes the U from that. So the sequence is he writes A-R-  
5 T, then he writes a crossbar and goes over to write the U.  
6 In this case -- so it's odd that someone would completely  
7 leave that T crossbar off because in fact that's part of the  
8 sequence of writing the name there. And also, if you look at  
9 the signature, the letter T is somewhat different from the  
10 way he makes his genuine letters T in the known signatures.  
11 The name Trevino, in almost every case that we had a genuine  
12 signature, you can understand as the name Trevino. There's  
13 an R-E-V-I and then sometimes the N-O are kind of slurred  
14 together, but you can read it as the name Trevino. In the  
15 two questioned signatures you really can't. You cannot make  
16 out those letter designs. Then we have another illustration  
17 here of a signature, of the enlargement of the two signatures  
18 in question, and you can see what I'm talking about on the  
19 line quality.

20 Q Let me show you, ma'am, what's been admitted as Exhibit  
21 490 and -- is your pointer gone?

22 A Let me see. There it comes, okay. Here, as I was  
23 talking -- oh, I think I was putting it on the screen here --  
24 as, you can see that this portion of the T is not nearly as  
25 smooth as you find in the genuine signatures. Also in the

1 crossbar of the T in the top signature, the same sort of  
2 thing. Look at the very blunt ending stroke of the name  
3 Trevino where the pen stops and the ink actually spreads into  
4 the paper fiber. It has a very even line width, as well, in  
5 the signature, and typically that's when there's even  
6 pressure throughout the writing. A normal writing pressure  
7 for a natural, spontaneous signature is that when you're  
8 going downward you write with heavier pressure, as you're  
9 going upward it will be lighter pressure, and there will be a  
10 real difference in the pressure with which you are writing.  
11 Natural movement is that downward you're writing heavier and  
12 upward you're writing lighter. Here, if you look at this,  
13 it's a very even pressure throughout the signature, very much  
14 a slow, drawn signature, it's a very deliberate signature.  
15 So, in my opinion, this signature is not natural writing,  
16 it's not spontaneous, and it's an attempt by someone to try  
17 to copy a signature of Mr. Trevino, it's not a genuine  
18 signature of Mr. Trevino.

19 Q And with respect to that opinion, what level of certainty  
20 did you find with respect to that opinion?

21 A It's a definite opinion.

22 Q And explain again what the definite opinion is with  
23 respect to the scale of certainty.

24 A Well, the scale of certainty starts with no conclusion  
25 and then goes -- which means I don't know -- then goes to the

1 level of indications which is a very low level of certitude,  
2 then to the level of probable and then to highly probable and  
3 then to definite. Definite meaning I have no reservations or  
4 qualifications to the opinion. The opinion is that the  
5 evidence absolutely is supported by the evidence in this case  
6 that this signature is not by the same writer as the known  
7 signatures.

8 Q And the jury is going to get to hear, hear a little bit  
9 later this afternoon from Larry Stewart, and do you know  
10 Mr. Stewart?

11 A I do, yes.

12 Q And how do you know Mr. Stewart?

13 A Well, I know him as an ink chemist. I've met him at  
14 meetings, talked to him about ink problems at meetings, and  
15 so I've known him and talked to him at conferences for, you  
16 know, quite some time.

17 Q And did you get a chance to review his deposition?

18 A I did.

19 Q And his report?

20 A Yes.

21 Q And did Mr. Stewart find the same or similar variances  
22 with, in the signatures found on the deed of trust and the  
23 builder's and mechanic's lien that you did?

24 A That was my interpretation of his report, that he did  
25 find the same problems with the design of the signature and

1 the line quality.

2 Q But he drew a different conclusion from those variances?

3 A Yes.

4 Q And with respect to the signatures of Arturo Trevino, do  
5 you know what opinion Mr. Stewart gives with respect to those  
6 signatures?

7 A His report states that there are indications that the  
8 signature is genuine, which is again the low level of  
9 certitude, very close to an I don't know or no conclusion  
10 answer. But he essentially discounts the problems and just  
11 says that there are indications it's genuine.

12 Q And so if you have, if you arrive at an opinion based on  
13 the level of certitude of indications, is that a situation  
14 where your opinion is less than probable?

15 A Absolutely, yes.

16 Q So if you, Ms. Masson, were to come up with an opinion  
17 based on indications, that would be an opinion that is not  
18 more likely than not, correct?

19 MR. LOCHRIDGE: Your Honor, I'm going to object to  
20 counsel leading the witness.

21 MR. RUMLEY: I'll restate it, Your Honor.

22 BY MR. RUMLEY:

23 Q With respect to the level of certitude, indications is a  
24 lower level of certainty than a more probable or more likely  
25 than not?

1 A In my interpretation of that level, yes, it does not meet  
2 more likely than not. It takes a level of probable to meet  
3 that standard.

4 Q Okay. And with respect to your opinion on the signature  
5 of Arturo Trevino, your opinion is based on a definite  
6 opinion?

7 A It is, yes.

8 Q Okay. And then with respect to Maria Trevino, the  
9 signatures that appear on the builder's and mechanic's lien  
10 contract and the deed of trust, do you know whether or not  
11 Mr. Stewart also finds the same or similar variances between  
12 the known signatures and the signatures found on those two  
13 documents for her?

14 A From reading the report that's what I understand, yes.

15 Q And is it your understanding that he arrives at a  
16 different conclusion?

17 A Yes.

18 Q And with respect to that conclusion, do you know whether  
19 or not Mr. Stewart arrives at a definite opinion?

20 A It's stated in his report as highly probable that the  
21 signature is genuine. He states that there is, that the  
22 differences are within her range of variation which, frankly,  
23 I disagree with. It's not in anything I saw.

24 Q All right. Now, with respect to your work in this case,  
25 you have submitted an invoice for your work?



1 A Yes, sir.

2 Q And do you know -- I'm not sure if 687 is in evidence.

3 MR. RUMLEY: Your Honor, we would offer Exhibit 687.

4 MR. LOCHRIDGE: We have no objection, Your Honor.

5 THE COURT: 687 is admitted.

6 (Defendant's Exhibit 687 admitted into evidence)

7 BY MR. RUMLEY:

8 Q Ma'am, do you know what your total charges are with  
9 respect to the work that you've done in this case?

10 A Well, I bill at the rate of \$200 an hour and, for actual  
11 time involved in the case, and I think that the total will  
12 come in around, somewhere around 10,000, probably.

13 Q Okay.

14 A Because of the number of hours. I mean I've been deposed  
15 twice and done all the examinations and two reports and a lot  
16 of work, a lot of time.

17 Q Okay. So it looks like in Exhibit 687 that you have, you  
18 charged about 6,000 and then up until today testifying, your  
19 bill will be around \$10,000?

20 A That's what I believe, yes.

21 Q Okay. With respect to your opinions on the signatures of  
22 Maria Trevino and Arturo Trevino to the deed of trust and the  
23 builder's and mechanic's lien contract, are those opinions  
24 based upon a reasonable degree of probability?

25 A They are, yes.

1 Q And in fact they are above a reasonable degree of  
2 probability, correct?

3 A Yes.

4 Q And when you performed your work and you did your  
5 analysis of the signatures in this case, did you use a  
6 methodology that is well accepted within your field?

7 A Absolutely, yes.

8 Q All right. Thank you, ma'am.

9 MR. RUMLEY: I'll pass the witness.

10 THE COURT: Thank you. Mr. Lochridge?

11 MR. LOCHRIDGE: Yes, Your Honor.

12 THE COURT: You may continue when it's convenient.

13 MR. LOCHRIDGE: Take me just a minute to load up  
14 here, Your Honor. May I proceed, Your Honor?

15 THE COURT: Please.

16 MR. LOCHRIDGE: Thank you.

17 CROSS-EXAMINATION

18 BY MR. LOCHRIDGE:

19 Q Ms. Masson, you've given two reports in this case, is  
20 that correct?

21 A Yes, sir, I have.

22 Q All right. And I think you've spent, because I went  
23 through the invoices, a total of about 19 hours on this  
24 project, does that sound about right?

25 A I would think it's more than that. I mean you've had me

1 in deposition more than ten hours, so I believe it's more  
2 than that.

3 Q Aw, don't blame me for all that. I just visited with you  
4 for about two or three hours, didn't I?

5 A You did, yes, but you weren't the only one.

6 Q Well, I guess at the time you arrived at your original,  
7 that's what I was thinking, at the time that you arrived at  
8 your original opinion you had spent about, oh, 15 or 16 hours  
9 in the matter, is that correct?

10 A I haven't reviewed my bill but my bill should reflect.

11 Q Can we go to the Elmo, please? It shows in July of 2010  
12 you had prepared your, preparation of written report of  
13 findings, and just doing the math there I total up about 17,  
14 18, 19 hours.

15 A Okay.

16 Q All right. So you had arrived at your, the bulk of your  
17 opinions after having worked only 19 hours, right?

18 A That was for the first report, yes. That was before I  
19 saw the original documents, of course.

20 Q And then, and then we went and looked at the original  
21 documents and revised your report, I think in almost every  
22 case becoming more certain in whatever it is your opinions  
23 had been before, correct?

24 A I examined, the original documents were brought to me, to  
25 my laboratory, and in I think at least one case I had an

1 inconclusive finding previously and when I saw the original I  
2 had an opinion, but the rest of them I believe were  
3 strengthened by examination of the original documents.

4 Q Now, as I understand from your background you have, you  
5 worked for about eight years individually with a mentor of  
6 some kind, is that correct?

7 A With Ms. Lacey, yes, sir.

8 Q Ms. Lacey. And then after that you went on, out on your  
9 own as a handwriting expert for hire, correct?

10 A As a questioned document examiner.

11 Q Questioned document examiner for hire?

12 A Yes, sir.

13 Q Okay. Have you ever worked for the FBI?

14 A Not as an employee.

15 Q Have you ever been employed by the Secret Service?

16 A Not as an employee, no.

17 Q All right. You mentioned -- well, I'll get to that in a  
18 minute. Now, you've gone over two questioned documents, the  
19 builder's and mechanic's lien and the deed of trust, but you  
20 also reviewed three other documents for authenticity of the  
21 signatures, didn't you?

22 A I think they are listed in my report as Q23, 3, 4 and 5,  
23 but one of them was several powers of attorney, so.

24 Q Right. And we'll get to those in just a minute.

25 A Okay.

1 Q But you didn't talk at all about three-fifths of your  
2 report or a good part of your report which was to review the  
3 signatures on a real estate lease, correct?

4 A I examined that, yes, sir.

5 Q Some powers of attorneys signed by Mr. Flores and  
6 Mr. King, correct?

7 A Either signed by or with their name, with their, with  
8 their name written as signatures.

9 Q With their written, name written in a signature form?

10 A Yes, sir.

11 Q And then also a property agreement?

12 A I had, I believe, a photocopy of that.

13 Q Right.

14 A I never saw the original.

15 Q Okay. So there were three other documents. And in each  
16 case of the builder's and mechanic's lien contract, the deed  
17 of trust, the real estate lease, the property agreement, and  
18 the powers of attorneys, the supposed signators, Mr. King,  
19 Mr. Flores and Mr. and Mrs. Trevino, had denied their  
20 signatures completely, correct? In each instance?

21 A I think that they denied many of them. I'm not, I don't  
22 remember all the nuances of their testimony.

23 Q Okay. We can go through their depositions if you want,  
24 but is it your recollection that they denied having signed  
25 any of those documents and in fact in several instance said

1 they had never even seen them before? Do you recall that?

2 A I recall they said that in several instances, yes.

3 Q Okay. Now, you talked a little bit -- and we'll get to

4 that in just a minute. You talked a little bit about

5 Mr. Stewart and then we looked at his report, and you read

6 his deposition and you looked at his report, and I think they

7 asked you this on your deposition, you concluded that he

8 followed the proper methodology, correct, in analyzing the

9 signatures?

10 A Well, until it got to the assessment of the evidence, I

11 thought he did, yes.

12 Q Yes, so his methodology -- you've got a disagreement on

13 the conclusions, but the methodology that Mr. Stewart

14 employed was the proper methodology for reviewing handwriting

15 exemplars and trying to learn of the genuineness of a

16 handwriting, of a signature, correct?

17 A I don't believe I had a problem with methodology, that's

18 correct.

19 Q Okay. And we talked a little bit, you talked a little

20 bit with your, with counsel about scale. I believe 242 is

21 it. Can we put 242 on the screen, please? This is a nine-

22 point scale handwriting opinion and this is -- and we'll talk

23 about how it's laid out here. This is the same nine-point

24 scale that you were referring to, correct?

25 A Yes, sir.

1 Q And we show, the way this is set up is we show the  
2 neutral area in the middle just like it were a scale, but no  
3 conclusion or cannot determine, correct?

4 A Yes, sir.

5 Q All right. And then it's depicted, if you're going to  
6 the right-hand side you're going towards a positive  
7 identification that the signature was written by the same  
8 person that wrote the known signatures, correct?

9 A Yes, that's what the scale shows.

10 Q And as you go to the left it's going in the opposite  
11 direction towards a positive, or elimination of someone as  
12 the writer, correct?

13 A Yes.

14 Q All right. And equidistant is you've got the  
15 indications, which is a lesser degree of certainty than  
16 probable, correct?

17 A Yes, it is.

18 Q And then over here highly probable, which after our  
19 deposition I purposely put very close to the identification  
20 or the positive identification, right?

21 A That is correct, yes.

22 Q And you're the one that taught me that.

23 A I did, yes.

24 Q There's really very little difference between the  
25 conclusion for a handwriting expert that it's highly probable

1 someone wrote something as the definitely wrote something,  
2 correct?

3 A Highly probable is a very strong opinion. I don't know  
4 about there being very little difference but it's very close,  
5 it is close.

6 Q Yeah, I think, I forget exactly how you said it in your  
7 deposition but it is right up next to the definite level of  
8 certainty, correct?

9 A Yes, I think Mr. Stewart describes it as almost certain  
10 in his report and I would agree with that.

11 Q You would agree with that, that it's almost certain?

12 A Yes, I would, yes.

13 Q So if you were to look at some signatures and come up  
14 with a definite finding and he were to come up with a highly  
15 probable, would you agree with me that that is very, very  
16 close in agreeing with you and Mr. Stewart?

17 A As long as they were on the same side of no conclusion, I  
18 would. That's --

19 Q Yeah. I suppose --

20 A In this case that's not what happened, but --

21 Q Well, but it is what happened with almost all the  
22 documents you've looked at, isn't it?

23 A Well, there was a critical, critical couple it didn't.

24 Q Right. Interesting point. The other three documents  
25 that you looked at, the lease agreement, the powers of



1 attorney, and I think there were three of them, and the  
2 property agreement, you and Mr. Stewart lined up just almost  
3 on top of one another, isn't that right?

4 A On the -- was it the property, you called it property  
5 agreement?

6 Q Right.

7 A I don't believe I ever reached an opinion about that one.

8 Q Okay. Well, let's look at the lease agreement then.

9 A Okay.

10 Q Will you pull up 96.023? And do you need a copy of your  
11 opinion in front of you or do you have all this pretty well  
12 committed to memory?

13 A I hope I have it committed.

14 Q Okay.

15 A I mean I hope I remember it.

16 Q All right. Let's draw up the signatures here at the top,  
17 and let's look at Maria Trevino's.

18 A Yes.

19 Q All right. Now, you came to the conclusion, I believe,  
20 that that was definitely her opinion, right? I mean her  
21 signature.

22 A I believe on the lease agreement I stated the opinions as  
23 very probable.

24 Q As highly probable.

25 A Highly probable or very probable, yes.

1 Q And Stewart said it was definite, correct?

2 A I don't remember. I don't have his report committed to  
3 memory, so.

4 Q Okay. Let's go to 026. Pull up Maria Trevino's  
5 signature. And this is one where you concluded it was highly  
6 probable, correct?

7 A I believe that's correct.

8 Q Okay. Let's go to 027. Oh, let's, before we leave, see  
9 that big looping part of the T?

10 A Uh-huh.

11 Q You saw that same kind of looping T on either the deed of  
12 trust or the builder's and mechanic's lien, didn't you?

13 A You saw the top but not the bottom.

14 Q The top one.

15 A But not the bottom. The bottom was, on those two  
16 documents was not like the bottom of that T.

17 Q But you had that same looping T, and she made her Ts in  
18 different ways, didn't she?

19 A A couple of different ways, but she didn't have the  
20 bottom like on those two documents.

21 Q And one of the ways is the top part looping, as in this  
22 real estate lease. We find that also in the deed of trust,  
23 correct?

24 A The top part, yes.

25 Q All right.

1 A Not the bottom part.

2 Q Let's go to 027. Here is her signature which you found  
3 to be at the very far highly probable that she wrote it.  
4 It's got a good bit of variation from her other known  
5 signatures, doesn't it?

6 A Actually it's just the slant, the way it goes up off the  
7 baseline is the only thing, which is, sometimes happens when  
8 someone is in a writing position, you know, maybe leaning  
9 over a desk and signing or something.

10 Q But, in any case, you found that highly probable that she  
11 signed that real estate lease?

12 A That she did, yes, sir.

13 Q Okay. Let's go to 029 and bring up, there it is, the  
14 fourth time, and here for the fourth time you arrived at the  
15 conclusion that it was highly probable that that was her  
16 signature, correct?

17 A Yes, sir.

18 Q And you know that at her deposition she's testified that  
19 that's not her signature and she never had even seen the real  
20 estate lease until her deposition. Are you aware of that?

21 A I think so. I've read her deposition but it's been  
22 several months.

23 Q So then in your view, from looking at that, you don't  
24 believe Ms. Trevino, do you?

25 A I believe that it's very probable that she did sign those

1 signatures, yes.

2 Q And it's very probable then she was not telling the truth  
3 when she's asked that question in court and at deposition?

4 A I can't say what she was thinking or what -- you know,  
5 all I can talk about is signatures. That's my area of  
6 expertise. It's not what people are thinking or what  
7 they're --

8 Q Well, without regard to what her intent was, you would  
9 agree with me that you viewed as highly probable that she was  
10 wrong when she testified under oath about the real estate  
11 lease agreement?

12 A That she as mistaken, yes.

13 Q Now, let's look at Cesar Flores.

14 A Okay.

15 Q You've looked at some of his signatures on the lease  
16 agreement. Do you remember that? Let's go, stick with 0, go  
17 back to 023. I don't know if you considered the printed,  
18 sort of half-printed, half-cursive Cesar Flores. Did you  
19 consider that as one of the signatures you looked at?

20 A No, sir.

21 Q Okay. Let's go to 023. I mean 027. There we go. That  
22 was his signature, right?

23 A That's his signature, yes.

24 Q Yeah, and you found that, once again on our scale, way  
25 over by the far right, highly probable that that in fact was

1 his signature?

2 A Yes.

3 Q Okay. Let's go to page 28. We see his signature again.

4 And once again you concluded that it was highly probable that  
5 that was his, that is his signature, correct?

6 A Yes, that's not the same writer who wrote the questioned  
7 signatures.

8 Q And let's go to page 28, go to page 28. That's 31 there.  
9 Here we see his signature for the third time in this document  
10 and once again you were virtually convinced that that was  
11 written by him, correct, highly probable?

12 A It's a highly probable opinion, yes, that that signature  
13 was written by the same person who wrote the known signatures  
14 of Cesar Flores.

15 Q And you know that he, too, denied in this courtroom and  
16 at his deposition that that was his signature, you're aware  
17 of that?

18 A My memory is that he did not believe it was, that's  
19 correct.

20 Q And denied ever even having seen the real estate lease  
21 before his deposition, do you recall that?

22 A I don't recall that one way or the other.

23 THE COURT: I'm sorry, did you say real estate  
24 lease?

25 MR. LOCHRIDGE: Yes, real estate lease.

1 THE COURT: Okay. Thank you.

2 MR. LOCHRIDGE: Real estate -- I may have slipped in  
3 power of -- real estate lease is what I meant to be talking  
4 about.

5 THE COURT: You did, you said that, I'm sorry.

6 MR. LOCHRIDGE: I'm sorry.

7 BY MR. LOCHRIDGE:

8 Q Okay. And you recall that Mr. Stewart agreed with you  
9 that in fact it's highly probable that's Mr. Flores'  
10 signature, right?

11 A I don't remember what his level of certitude was, but I  
12 know it was on that side of no conclusion.

13 Q Okay. And so the two of you both agreed that when  
14 Mr. Flores was testifying in this court and on his deposition  
15 that that is not his signature and that he had never seen the  
16 document before, you think that's incorrect testimony,  
17 correct?

18 A I think he's mistaken.

19 Q Yes.

20 A Yes.

21 Q He told something that wasn't true?

22 A Well, you're -- I don't know how to answer that other  
23 than to say I think the evidence in the handwriting is that  
24 that is very probably his signature.

25 Q Would indicate that what he said was not true?

1 A Well, yes, that he was mistaken.

2 Q All right.

3 A Uh-huh.

4 Q And he was mistaken on the power of attorney as well,  
5 wasn't he, when he testified that he hadn't signed the power  
6 of attorney. Let's look at one, because -- page 33, 96.33,  
7 pull up the Cesar Flores. This is the first of three power  
8 of attorneys that you looked at, correct?

9 A I believe so. That's --

10 Q All right.

11 A That's one of them.

12 Q And this one I think you concluded that that was  
13 definitely his signature. You concluded that in your  
14 supplemental?

15 A I believe that's correct. The supplemental report, yes.

16 Q And once again, you recall he testified that he had never  
17 even seen this power of attorney before?

18 A I don't recall the nuances of whether he had never seen  
19 it. I remember that he didn't believe he had signed it.

20 Q And you disagree with that, you believe that's incorrect  
21 testimony?

22 A I believe the evidence in the handwriting, which is what  
23 I can testify about, is that that signature is by the same  
24 person who wrote the genuine signatures.

25 Q Who wrote the signatures that he does own up to it being

1 his own signatures?

2 A Well, that were signatures written in the normal course  
3 of business on other documents.

4 Q By Mr. Flores?

5 A Yes.

6 Q What page is that? Is that 35? 30? Okay. Let's look  
7 at 96.035. This is another power of attorney, comes from the  
8 files of CMH Homes, that bears the purported signature of  
9 Cesar Flores. Do you see that?

10 A I see the name, yes.

11 Q And you concluded that it was highly probable that in  
12 fact that is his signature, correct? That it matched his  
13 known writings?

14 A I'm not sure whether that's the one that I never saw the  
15 original of. It is --

16 Q Yes, you did not change your opinion at the supplemental,  
17 in your supplemental report. That comes from your original  
18 report --

19 A Okay.

20 Q -- where you concluded that it's highly probable,  
21 virtually definite, that that's his, Mr. Flores' signature,  
22 correct?

23 A I recall almost certain.

24 Q Almost certain.

25 A But if that's the one that I only saw the photocopy of



1 then, yes, that's correct.

2 Q Right. Because when you saw the photocopy you were able  
3 to say that definitely was his signature, right, like you saw  
4 in the one before?

5 A When I saw the original.

6 Q Yes.

7 A Yes.

8 Q When you saw the original

9 A When I saw the original of that.

10 Q And so once again he denied signing that under oath and  
11 once again you think his testimony under oath is wrong,  
12 correct?

13 A I think it's mistaken, yes.

14 Q And Mr., you recall Mr. Stewart agreed with you as to  
15 Mr. Flores' signature, it being highly probable that in fact  
16 that is his signature?

17 A I don't remember his level of certitude. I remember that  
18 we were, we were on the same side of no conclusion regarding  
19 the, most of the power of attorney signatures.

20 Q All right. Okay. Let's go to Alvin King, and you  
21 reviewed some documents that he had purportedly signed, he  
22 had denied having signed, correct? Some powers of attorney?

23 A I don't have as good a memory of his deposition. I don't  
24 know whether I didn't read it as carefully or --

25 Q Okay.

1 A I know Mr. Flores and Trevinos, the Trevinos, I read more  
2 carefully.

3 Q All right. Let's switch to the Elmo, please, just so  
4 there's no mistake. This is page 57 of his deposition.

5 THE COURT: I'm sorry, has that been admitted?

6 MR. LOCHRIDGE: No, this is, this is his deposition  
7 testimony, Your Honor.

8 THE COURT: I'm sorry, has that been admitted? Do  
9 you want to show it to the jury?

10 MR. LOCHRIDGE: I have not, it has not been marked  
11 as an exhibit. I think we can just show it before the -- if  
12 I could approach the witness or we could put it on this.

13 THE COURT: I'll put on the closed.

14 MR. LOCHRIDGE: Okay.

15 BY MR. LOCHRIDGE:

16 Q Can you see that?

17 A Yes, sir, I can.

18 Q Do you see where I've got it highlighted?

19 A Yes, I do.

20 Q Do you see where he denies that the signature on what had  
21 been marked Exhibit 115 is his?

22 A Yes. He says that they are not, that he did not sign  
23 Exhibit 115.

24 Q Okay. Let's go, let's put 96.034 on the screen, please.  
25 And here we have two of Alvin King's signatures, both of

1 which he denied under oath having signed, and your conclusion  
2 upon looking at the known signatures is that in fact he  
3 definitely did sign those, correct?

4 A I believe that's correct.

5 Q All right. And you recall Mr. Stewart also concluded  
6 that he definitely did sign those powers of attorneys that  
7 are reflected at 96, page 34?

8 A Again, I don't remember his level of certitude but I  
9 believe we were on the same side of no conclusion.

10 Q And you definitely believe Mr. King was telling something  
11 that was untrue when he testified under oath saying he had  
12 never seen that document before and it's not his signature?

13 A Well, again, I believe the evidence is that he was  
14 mistaken.

15 Q All right. Let's look at another power of attorney which  
16 is 96, Exhibit 96, page 35. Again, we've got another power  
17 of attorney coming from the files from CMH Homes that appears  
18 to bear Alvin King's signature, and you concluded that it was  
19 in fact highly probable that he wrote that, that he signed  
20 that power of attorney, correct?

21 A I believe that's correct.

22 Q And once again you would disagree with his denial under  
23 oath that he never signed that power of attorney, correct?

24 A Again, I think he's mistaken.

25 Q Let's go to Arturo Trevino. Let's go to Exhibit 96, page

1 23, the real estate lease again. Here we've got Arturo  
2 Trevino's signature, correct?

3 A Yes, sir.

4 Q With the A made not in the cursive way but in sort of  
5 the, what would you call that, the --

6 A Printed form.

7 Q Printed form?

8 A Yes, sir.

9 Q Just a, this is a printed form A on the builder's and  
10 mechanic's lien and the deed of trust? It was a printed form

11 A, it wasn't a cursive A?

12 A It was a printed form A, yes.

13 Q All right. And this Arturo Trevino bearing the printed  
14 form A, you concluded that it was highly probable that he  
15 signed it, correct?

16 A Yes, sir.

17 Q All right, let's go to page 26 of the real estate lease.  
18 Here we've got Arturo Trevino. Once again your conclusion,  
19 highly probable that is in fact his signature, correct?

20 A On the original, yes.

21 Q All right. And let's go to page 27. Once again we see  
22 Arturo Trevino's signature and once again you conclude the  
23 same, highly, in your opinion highly probable that is in fact  
24 his signature, correct?

25 A Yes, sir. Yes, sir.

1 Q And if you could go to 194, page 52. We have just  
2 extracted the four signatures from the real estate lease, and  
3 for all of those four signatures you concluded highly  
4 probable that in fact he did sign it, right?

5 A Yes. It's very natural writing, speeding, you know,  
6 spontaneity, a lot of spontaneity.

7 Q Despite the fact that he testified under oath at least  
8 twice that he did not sign it?

9 A Well, I just think he's mistaken about those.

10 Q As well as the others, correct?

11 A Not all of the others.

12 Q Just the deed of trust and the builder's and mechanic's  
13 lien, right?

14 A That's correct.

15 Q He's telling the truth there but on all these, on the  
16 real estate lease he, in your view, is mistaken?

17 A Yes, sir.

18 Q And all these documents we find in Clayton and CMH Homes  
19 files, right? Are you aware of that, that's where these came  
20 from?

21 A I believe it was an attorney from that side that brought  
22 them to my lab, so I guess you have them.

23 Q Okay. Now, on these powers of attorney, there were a  
24 couple of powers of attorney where you concluded definitely  
25 that they were not written by, in Mr., in the case of

1 Mr. Flores, correct?

2 A Yes, sir.

3 Q Let's go to 96, page 34. Let's turn it around. Now, we  
4 looked at this earlier on Alvin King's and you concluded that  
5 you were either definite or highly probable that that was his  
6 signature, right?

7 A Yes, sir.

8 Q But you were definite that that is not Cesar Flores'  
9 signature on page, Exhibit 96.034, right?

10 A Yes, I don't believe either one of those were, in my  
11 opinion, authentic signatures of Mr. Flores.

12 Q And once again Mr. Stewart agreed with you, correct?

13 A Again, I don't remember his level of certitude but I  
14 believe that we were on the same side of no conclusion.

15 Q Okay. And let's go to 96, page 33. Okay, let's, we've  
16 got 96.33. Now, this is one where you were pretty well  
17 convinced that Cesar Flores had signed, correct?

18 A Yes.

19 Q All right. But you thought that probably Alvin King did  
20 not?

21 A That's correct.

22 Q And I think Stewart had no conclusion as to Alvin King.  
23 Do you recall that?

24 A I think that's accurate.

25 Q Okay.

1 A I think so.

2 Q Well, let's, going back to the other one where it's Cesar  
3 Flores and it's misspelled, and you were definite that that  
4 was not his signature, and I think Stewart was very close to  
5 that, you are not telling this jury that those are forgeries,  
6 are you?

7 A Document examiners don't talk in terms of forgery, we  
8 talk in terms of whether they are by the same writer as the  
9 known signatures.

10 Q In fact, you are not testifying that any of the, any of  
11 the signatures you have reviewed are in fact forgeries,  
12 correct?

13 A That's a legal term. I don't talk about that, I talk  
14 about the genuineness of the signature.

15 Q Is it correct that you are not here testifying that any  
16 of these signatures you have reviewed are forgeries?

17 A That's not a term I use, so that's correct.

18 Q Okay.

19 A At least I don't use it in reports and testifying.

20 Q Because, for example, one might have permission to write  
21 someone else's name, right?

22 A I have permission to sign my husband's name --

23 Q And we went over this --

24 A -- to the backs of checks, so.

25 Q We went over this at your deposition where sometimes you

1 write your, you endorse your husband's check on the -- and  
2 cash it in your account, because you have his permission to  
3 sign, right?

4 A Yes.

5 Q Okay. And you don't know whether or not with regard to  
6 Cesar Flores or Alvin King that they gave Clayton or CMH  
7 Homes permission to sign certain documents that were used in  
8 the titling of a motor home, you don't know anything about  
9 that, do you?

10 A I do not know anything about that, no.

11 Q It very well could be that in the real estate, the retail  
12 installment contract that Flores and King signed, they gave  
13 Clayton or CMH Homes the right to sign their names to certain  
14 documents used to title the motor home. You don't know  
15 anything about that?

16 A I don't have any opinion about that. I don't --

17 Q Okay.

18 A It's not my area of expertise.

19 Q Now, you, in the work that you did, you did something  
20 called an indentation analysis, you recall that?

21 A Yes, sir.

22 Q Now, you could spend time, some time about that, and you  
23 wrote about that in your reports somewhat?

24 A In the observation section, yes.

25 Q But nothing that you found in the indentations indicated



1 to you one way or the other whether or not a particular  
2 forgery signature was a legitimate signature or not, right?

3 It didn't inform your opinions as to whether or not any  
4 particular signature was a signature of the purported writer?

5 A It didn't provide me any information that would, that  
6 would influence the opinion about the handwriting itself.

7 Q Okay. Now --

8 A Or the authenticity of the handwriting.

9 Q Okay. The data, let's talk about what the data is that  
10 you as a questioned document examiner uses. Your data first,  
11 I think, is to look at the known signatures, is that right?

12 A Yes.

13 Q And you want to gather together as many of the known  
14 signatures as you can, to have as broad a database as you  
15 can, in order to get an idea of how this person signs their  
16 name, right?

17 A Yes, yes.

18 Q Okay. Because we've seen that there's broad variation in  
19 how people sign their names and you've admitted to that,  
20 right?

21 A There can be. Some people will be very consistent  
22 writers, others will have extreme variation. In this case  
23 there was sort of an average level of variation.

24 Q All right. But you were provided with some known  
25 signatures that you decided not to review in your study,

1 correct?

2 A There was one signature that apparently there was some  
3 disagreement about, about whether it was authentic or not, so  
4 I did not use that.

5 Q There was -- let's talk about that. There was a  
6 signature on a warranty deed --

7 A Yes.

8 Q -- which was 96.116. Go to 118, please, and just pull up  
9 the two signatures. Now, in this particular case, both  
10 Mr. Trevino and Mrs. Trevino testified at their deposition  
11 repeatedly that those were their signatures, right?

12 A Yes, sir, I believe so.

13 Q Okay. Yet you used Maria Trevino's signature but you did  
14 not use Arturo Trevino's signature, correct?

15 A That's correct.

16 Q All right. You also didn't use his signature on some,  
17 what we're calling court documents that were provided to you  
18 during the course of your, prior to your deposition. Do you  
19 recall that?

20 A There were some documents presented to me the night  
21 before the deposition.

22 Q Right. And this was your first deposition taken in  
23 August of this year, right?

24 A That sounds right.

25 Q Okay. Could we go to 96.159, please? While that's,

1 while they are pulling that document up, these were three  
2 documents of Arturo Trevino's signature to some court records  
3 that there was no question as to their authenticity, correct?

4 A When the documents were presented to me there were more  
5 than that, I believe, there were four or five, some of which  
6 had a different name entirely, and so it was never made clear  
7 to me whether any, whether they were acknowledged as  
8 authentic or not.

9 Q The three documents I'm referring to, and I can bring  
10 them up in unredacted form but I think that counsel will  
11 agree that they are authentic signatures, were court  
12 documents that were given to you prior to your first  
13 deposition, which was two months ago, but you did not use in  
14 your analysis, right?

15 A Again, for specific reasons, I did not go back and  
16 re-examine them.

17 Q Okay. And you didn't talk to the lawyers that had hired  
18 you to find out what the story is on these what appear to be  
19 known signatures, right?

20 A Well, again, they were in a group of more than the three,  
21 I believe, and some of which had a different first name.

22 Q I'm just talking about the three that had Arturo Trevino.  
23 There was no doubt about their name.

24 A Well, the night before the examination I was given a  
25 group that was more than the three, and it was never

1 clarified to me whether, which of them were admitted to be  
2 genuine, so I did not pursue it further than that.

3 Q In the two months that you had between that and your  
4 second deposition that I took, you made no effort to get back  
5 in touch with Mr. Rumley to find out what's the story on  
6 these Arturo Trevino signatures, correct?

7 A I had no additional information, that's correct.

8 Q So you didn't go back and try to find out, I need some  
9 more information on these known signatures, you didn't go  
10 back to Mr. Rumley or anyone else and say, Give me the true  
11 scoop here, correct?

12 A No, sir. I don't believe they were ever discussed again.

13 Q Well, I talked to you about them at your deposition in  
14 August.

15 A Well, until my deposition, yes.

16 Q In October, where you said you hadn't considered them.

17 A Right, that I had had no additional information about  
18 them to that date.

19 Q Okay. And let's just look at them briefly. We may see  
20 them again later. That's 159. Look at 160. And here we see  
21 the A in the printed style with the crossbar similar to the A  
22 we see on the builder's and mechanic's lien and the deed of  
23 trust, correct?

24 A It's the same printed form, yes.

25 Q Right. And there's some indication that it was written

1 slowly and deliberately, isn't there, in the A?

2 A Not particularly. I mean this is from a copy of a copy.  
3 It's not on the original document as it was on the builder's  
4 and mechanic's lien and the deed of trust.

5 Q Well, you had concluded before you saw the originals of  
6 the documents that we might have a non-authentic signature  
7 because of slow and deliberate movement, right?

8 A Because of that as well as differences in the design.  
9 For instance, no crossbar on the T, you have a crossbar on  
10 the T there.

11 Q But on the question of slow and deliberate, you were  
12 willing to reach an opinion that it's slow and deliberate and  
13 therefore perhaps not authentic without seeing the original,  
14 correct?

15 A I reached a qualified opinion.

16 Q Right.

17 A And expressed my concern about seeing the original.

18 Q And here we see in the A, we see indicia of slow and  
19 deliberate writing, correct?

20 A I don't know.

21 Q But it doesn't matter now because you haven't considered  
22 that in your analysis, correct?

23 A I did not consider that particular signature, that's  
24 correct.

25 Q Okay. And if you had, you might have thought, well,

1 there is some evidence out there of slow and deliberate  
2 writing in the hand of Arturo Trevino, correct?

3 A No.

4 Q No.

5 A Look at the ending.

6 Q Now, while we're talking about slow and deliberate, when  
7 you see this kind of writing that leads you to believe that  
8 it's slow and deliberate, there are other potential causes  
9 for that, aren't there? For example, the writing surface  
10 might give you the same indications?

11 A Not typically of slow and deliberate, no.

12 Q The mental condition of the person writing it, whether or  
13 not they are tired, whether or not they are, they have been  
14 drinking, whether or not they are on drugs, things like that,  
15 those could play into the role of whether or not it appears  
16 to be slow and deliberate, correct?

17 A Well, as far as alcohol and drugs, those tend to be, tend  
18 to cause a person to be, have a more slurred, more scrawled  
19 signature and it can cause an abnormal signature, but they  
20 don't tend to be more slow and deliberate, they tend to be  
21 just scrawled out there and, if anything, written with more  
22 abandon rather than with this slow, careful deliberation.

23 Q But there are many reasons why someone might be writing  
24 something slowly and deliberately, correct? It's an  
25 important document. They want to do it right.

1 A Well, they will tend to form letters more carefully  
2 sometimes in a -- for instance, sometimes on a will you'll  
3 see something where somebody writes their name where it's  
4 really readable whereas on a, like a delivery ticket,  
5 somebody brings a UPS package to your door, they just scrawl  
6 out a signature that you can't even read, but that's not what  
7 happened in this case. I mean, actually, as we pointed out,  
8 the Trevino was not even readable on two --

9 Q Right.

10 A -- on a couple of the signatures in question.

11 Q Besides not reviewing these particular known exemplars,  
12 you made no effort to go, what I would call, to the extrinsic  
13 evidence in the case. You know what the issues in this case  
14 are, right? You have been told that by the lawyers?

15 A Not particularly. I know, you know, that there's a lien  
16 and a deed of trust and --

17 Q You didn't look to see, to try to find out, for example,  
18 that there was other evidence that in fact the Trevinos were  
19 aware of the deed of trust and the builder's and mechanic's  
20 lien, you made no attempt to uncover that or even to learn  
21 it, right?

22 A I'm a document examiner.

23 Q Not your job.

24 A I'm not an attorney or an investigator, I'm a document  
25 examiner. I examine handwriting, paper, ink, printing

1 processes.

2 Q Now, one of the things that you said on your deposition  
3 and you said here today, that what you found -- and let's, we  
4 can pull that down from the screen. I think in your  
5 deposition you said that the signatures on the deed of trust  
6 and the builder's and mechanic's lien, your words were, "were  
7 remarkably similar to the known writings." Do you recall  
8 testifying to that?

9 A They were remarkably similar to each other. No, I don't  
10 remember testifying that they were remarkably similar to the  
11 known writing. I said they were pictorially similar to the  
12 known writing.

13 Q I think I asked you about tracings. Do you recall that?

14 A Yes.

15 Q Okay. And you answered about tracings that you thought  
16 they were close enough, the difference was so subtle, so  
17 slight, that these might actually be tracings. Do you recall  
18 that? Do you recall that?

19 A What I was referring to, I'm not sure, maybe I didn't  
20 communicate it correctly, but was they were, particularly  
21 with the Maria Trevino signatures, similar to each other. If  
22 you put one on top of the other, those two signatures were  
23 very similar, which made me wonder whether they could have  
24 both been either simulations or tracings from a single model,  
25 whether somebody had a single model they were trying to copy.



1 Q Okay. But I think that's the point is that with, in  
2 connection especially with Maria's, that the, they were so  
3 similar to another, other known signatures of Maria, that it  
4 possibly could have been tracings, someone trying to trace  
5 over a signature of Maria Trevino that they already had, but  
6 you concluded that there was no actual evidence of tracing  
7 but that they were in fact remarkably similar. Do you recall  
8 that?

9 A They had, yeah, they had some of the same problems, like  
10 that T was wrong on both of them in the same way, as if  
11 somebody was copying one model.

12 Q Do you recall saying in your deposition that, "They  
13 certainly are, particularly with the Maria Trevino  
14 signatures, are remarkably similar"? Do you recall  
15 testifying to that?

16 A I don't recall testifying to that but I agree with it.

17 Q Okay.

18 A If that helps.

19 Q And I think you said earlier, and I wrote it in my notes,  
20 that it looked to you like it was an attempt to try to copy a  
21 signature.

22 A Yes, what we call a simulation.

23 Q A simulation, okay.

24 A But slowly drawn attempt to copy her.

25 Q All right. So what you saw in the deed of trust

1 signatures and the builder's and mechanic's lien signatures  
2 was an attempt by someone, in your opinion, perhaps to try to  
3 copy an existing signature of Maria Trevino or Arturo  
4 Trevino, right?

5 A Yes.

6 Q Okay.

7 A I'm not sure I didn't lose your train of thought through  
8 the middle, though.

9 Q Let me make sure -- this is important.

10 A Okay.

11 Q Let me make sure that I got your testimony. I've written  
12 it here a couple of times. That you think it was an attempt  
13 to try to copy their signatures, right?

14 A I believe they are simulations, yes.

15 Q Okay. In order to copy someone's signature you've got to  
16 have a signature to go by, correct?

17 A Yes.

18 Q Okay. And were you given an example of a signature that  
19 they might have gone by, whoever it is that wrote these,  
20 signed these signatures?

21 A Well, of course, in my opinion the lease was, very  
22 probably had genuine signatures right there and --

23 Q And they denied signing that.

24 A Well, I understand they denied it, but I also understand  
25 that they were in your client's possession.

1 Q Uh-huh.

2 A So.

3 Q So, if you believe the Trevinos, if you believe the  
4 Trevinos and the Floreses, they didn't sign that, they didn't  
5 sign anything, right? Right? Isn't that what they testified  
6 to, they didn't sign anything?

7 A No, I don't think -- I mean Mr. Flores and Mr. King  
8 testified that they did sign documents.

9 Q They signed the retail installment contract.

10 A Well, I don't remember what the specifics were but there  
11 were documents that they signed.

12 Q But they all, but Trevino, the two Trevinos denied  
13 signing anything, denied ever even going to CMH Homes,  
14 correct?

15 A I don't remember whether they testified they didn't go  
16 there. I don't --

17 Q Yeah. Well, the jury, the jury heard that testimony.

18 A Okay, I mean that's --

19 Q But the only testimony you're aware is their clear  
20 testimony that they denied signing the real estate lease or  
21 any documents that you looked at, correct?

22 A I don't remember that they acknowledged their signature  
23 on any of the documents. That's the best way I know to  
24 express it.

25 Q Okay. Now, is it your testimony -- well, I, can we put

1 Exhibit 242 up on the screen, please? When we're over here  
2 on the right and you are identifying that someone definitely  
3 did write the document, such as you've done several times  
4 with regard to Flores and King, that's a specific  
5 identification that, I know the person that wrote these known  
6 signatures wrote that, right?

7 A Have the same writing, the same writing.

8 Q The same writing. And when you say highly probable, it  
9 is right up next to in your scale of credibility, correct?

10 A Well, scale of certitude, yes.

11 Q Of certitude.

12 A Yes, sir.

13 Q Okay. But when you go to the left and you say, well,  
14 there are some indications that you didn't, here she didn't  
15 write what's there, probably did not write what's there, now  
16 we get over there to highly probably didn't write. Now, when  
17 you say elimination or definitely did not write, are you  
18 saying that of all the people in the whole wide world,  
19 anybody could have written those signatures except Arturo or  
20 Maria Trevino? Is that your testimony?

21 A I'm saying they did not write them. That's my opinion,  
22 yes.

23 Q But it could be anyone else in the world, it's just not  
24 them, is that your testimony?

25 A It depends on the case. In this case, because they're

1 simulations, I cannot tell you who wrote them.

2 Q Okay.

3 A If they are natural writing but just, you know, if  
4 somebody takes one of my checks and goes and signs my name to  
5 it but they don't know how I write, then I can probably tell  
6 you not only that I didn't but, if I have writing of that  
7 person, who did. That's not the situation here, though.

8 Q In your view it's a simulation?

9 A Yes.

10 Q And, but you are not here to tell this jury, in fact I  
11 think you said on deposition you can't say that Mr. King or  
12 Mr. Flores didn't simulate Mr. Trevino and Mrs. Trevino's  
13 signature, can you?

14 A I cannot tell you who wrote it. I cannot --

15 Q Okay.

16 A Yeah, I cannot tell you who wrote them.

17 Q If it is in fact a simulation and not written by  
18 Mr. Trevino and Mrs. Trevino, you can't tell this jury who it  
19 is that did it, can you?

20 A That's correct. I can tell you --

21 Q And it may --

22 A Go ahead.

23 Q And it may very well have been someone who had permission  
24 to write their name, correct? Correct?

25 A I can't agree with that.

1 Q Well, wait a minute. Why can't you agree with that? Why  
2 couldn't they -- why is it suddenly that someone with  
3 permission isn't included in the group of people that could  
4 have simulated it?

5 A Well, they can be included in that group.

6 Q Okay.

7 A But I'm just -- your insinuation was that was probably  
8 who did it, and if you have someone's permission to sign  
9 something I don't think you're going to go through that real  
10 careful simulation process. That's --

11 Q You might do that if you didn't have permission, is that  
12 right?

13 A I suspect you might.

14 Q And, but then again, you might if you just simply wanted  
15 to be able to tell somebody that's Mrs., that's my sister's  
16 signature, and have that person believe it, you might want to  
17 simulate it, correct?

18 A Kind of like that's my mama's signature on that --

19 Q Yes.

20 A -- permission slip at school?

21 Q Exactly, exactly.

22 A I don't know. I mean --

23 Q But that, you --

24 A Having never simulated my --

25 Q It sounds like you've got experience in simulating

1 signatures.

2 A I had mine simulated once, but.

3 Q And you've been actually in the shoes that maybe someone  
4 is standing in now, that they simulated a family member's  
5 signature for their own purposes, correct?

6 A And there was a price to pay, too.

7 Q Yes, that is true, there is a price to pay.

8 A There is a price to pay, yes.

9 MR. LOCHRIDGE: And I have no further questions.

10 THE COURT: Anyone else?

11 MR. B. GUTIERREZ: Yes, yes, Your Honor. May we  
12 confer?

13 THE COURT: Go ahead.

14 (Mr. Lochridge and Mr. B. Gutierrez conferring off  
15 the record)

16 CROSS-EXAMINATION

17 BY MR. B. GUTIERREZ:

18 Q Before we get away from this discussion about  
19 simulation --

20 A Yes.

21 Q You don't know, Ms. Masson, if a man by the name of Robin  
22 Moore has testified that he did a lot of simulations of  
23 someone else's signature, you don't know that?

24 MR. LOCHRIDGE: Your Honor, I'm going to object to  
25 this because Robin Moore was clear that he never signed any

1 customer's --

2 MR. B. GUTIERREZ: I'm not talking about customers.

3 MR. LOCHRIDGE: -- or landowner's signatures.

4 MR. B. GUTIERREZ: I'm not talking about customers.

5 THE COURT: All right. Go ahead.

6 BY MR. B. GUTIERREZ:

7 Q You don't know, do you, that there's a man that's  
8 testified that he made a lot of simulations of someone else's  
9 signature, you don't know that, right?

10 A I read some of Mr. Moore's deposition. I don't remember  
11 the specifics of it, though.

12 Q And you don't know that there is an individual that  
13 they're going to call later this afternoon that will also  
14 testify that he on many occasions did a simulation of someone  
15 else's signature, specifically the signature of Benjamin  
16 Joseph Frazier? You don't know that, right?

17 A I know that there are a lot of signatures out there by  
18 different writers of Mr. Frazier's signature.

19 MR. B. GUTIERREZ: I'm looking for Exhibit Number 5.  
20 Those are the powers of attorney and they should be here.  
21 There you go.

22 BY MR. B. GUTIERREZ:

23 Q You mentioned, and I think you, in trying to answer  
24 Mr. Lochridge's question concerning my client's testimony in  
25 deposition and perhaps here in this trial concerning whether



1 or not they had signed particular documents, and I think you  
2 used the word, well, you know, they're mistaken, I think you  
3 used the word mistaken.

4 A Yes.

5 Q If Mr. Flores and Mr. King had testified that, number  
6 one, they had never met an individual by the name of Benjamin  
7 Frazier; if they had testified that when they went to the  
8 closing there was three individuals there, himself, Mr. King,  
9 Flores and the sales person, an individual by the name of  
10 Lance, I think they identified him by the name of Lance and I  
11 believe the record is going to indicate that his true name is  
12 Christopher Lance Kimball, who I believe they are able to  
13 call later today; if they testify, that is the only  
14 individual that we dealt with, that is the only individual  
15 that presented any documents to us to execute, to sign; could  
16 that be an explanation why, when they were presented power of  
17 attorneys, power of attorneys that show a notary block and a  
18 notary signature of the man by the name of Benjamin Frazier,  
19 could that be an explanation of why they could be mistaken or  
20 why they said that's not my signature, or said I don't  
21 remember seeing this document, could that be an explanation?

22 MR. LOCHRIDGE: Objection, Your Honor, leading the  
23 witness.

24 THE COURT: Sustained.

25

1 BY MR. B. GUTIERREZ:

2 Q Mr. Lochridge also asked you that if the, if the RIC, the  
3 retail installment contract, in the fine print, in the fine  
4 print of the document that Mr. Flores and Mr. King have  
5 admitted to executing and signing, they gave the authority or  
6 they gave the permission to anyone to sign their, their  
7 signature on any document that that could mean, maybe be an  
8 explanation for some of the variances in some of the  
9 signatures? Do you remember that question?

10 A Sort of.

11 Q Okay. Of course, if that was in fact true, perhaps the  
12 easiest thing would be for anyone from Vanderbilt to come  
13 forward and say, Well, I signed this document with the  
14 permission of Mr. Flores and Mr. King, right?

15 MR. LOCHRIDGE: Your Honor, again, leading the  
16 witness. I object.

17 MR. B. GUTIERREZ: Just asking what her opinion is.

18 THE COURT: Sustained.

19 MR. LOCHRIDGE: Thank you.

20 (Mr. B. Gutierrez and Mr. Rumley conferring off  
21 the record)

22 BY MR. B. GUTIERREZ:

23 Q Let me show you Exhibit Number 7. What I'm going to try  
24 to do, Ms. Masson, is I'm going to, I'm going to represent to  
25 you -- this is, this is Exhibit Number 7. This is the

1 builder's and mechanic's lien contract. Let me just, let me  
2 see if I can get this.

3 MR. LOCHRIDGE: Here is this Exhibit 5 if you want  
4 it.

5 MR. B. GUTIERREZ: Could I have a moment first?

6 (Off the record discussion at counsel table)

7 BY MR. B. GUTIERREZ:

8 Q I'm going to show you the documents that you testified  
9 and wrote your report on, which was back to the deed of trust  
10 which is Exhibit Number 6, and the builder's and mechanic's  
11 lien contract which is Exhibit Number 7, and this is, these  
12 are the documents, the two documents you opined that it was  
13 your opinion that those were not the signatures of the, of  
14 Maria Trevino and Arturo Trevino, is that correct?

15 A Yes, sir.

16 Q And then we have this document, there's, it's Exhibit  
17 Number 5, and it shows one, two, it looks like it shows three  
18 separate power of attorneys, okay? There's that one, the  
19 front, that's the first one, first page, and go to the second  
20 page, we have two more power of attorneys, okay?

21 A Okay.

22 Q Now, I know that you were asked to look at the signatures  
23 of the Trevinos, the signatures of Mr. Flores, the signatures  
24 of Mr. King, but I now want you to just look, because  
25 Mr. Lochridge was making a point about look at this and look

1 at this slant and look at this loop, and I just want you to  
2 look at these notary blocks, and the jury will look at them,  
3 I just want you to look at them. And we go to the first  
4 page, and the individual that is identified as the notary on  
5 January 5th is a man by the name of Benjamin Frazier, right?

6 A Yes, that's what the stamp shows.

7 Q And now we look at the, and maybe I can just kind of do  
8 it side-by-side, this is going back to the Number 7, Exhibit  
9 Number 7, document's dated January the 7th, then we look at  
10 the deed of trust, and just like Mr. Lochridge was trying to  
11 point out different variances in the signature, I mean you  
12 haven't been asked to give opinions about this but can you  
13 see just by looking at the documents, there appear to be some  
14 differences?

15 MR. LOCHRIDGE: Your Honor, if she hasn't been asked  
16 to give opinions on this in her report we're going to object,  
17 and she hasn't.

18 THE COURT: And she hasn't?

19 MR. LOCHRIDGE: Has not.

20 THE COURT: Mr. Gutierrez?

21 MR. B. GUTIERREZ: I just was, it's cross-  
22 examination, Your Honor, to the questions by Mr. Lochridge  
23 concerning the comparisons of the Trevino signature and the  
24 comparisons of the Arturo and Maria Trevino signature, Your  
25 Honor, and just simple questioning, if there is --

1 THE COURT: Sustained.

2 MR. LOCHRIDGE: Thank you.

3 THE COURT: Go ahead, please.

4 BY MR. B. GUTIERREZ:

5 Q You know that all of these documents that you've looked  
6 at were actually in the custody of Vanderbilt Mortgage and  
7 Finance, that they were produced to us during this  
8 litigation, you know that, right?

9 A The originals were, yes. Yes. It's my understanding.

10 Q Did you know that the individual that is identified in  
11 those notary blocks that you just saw a few minutes ago, do  
12 you know he's testified that someone forged his signatures on  
13 this document?

14 A From reading his dep- --

15 MR. LOCHRIDGE: Your Honor, it goes beyond her  
16 testimony in this court.

17 THE COURT: Sustained.

18 BY MR. B. GUTIERREZ:

19 Q If we had a, if we had a recording of the closing of the  
20 transaction that we could listen to, we could certainly tell  
21 who signed the power of attorney, true?

22 MR. LOCHRIDGE: Your Honor, object. Goes way beyond  
23 her testimony.

24 THE COURT: Sustained.

25 MR. B. GUTIERREZ: That's all I have. Thank you,

1 Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. RUMLEY:

4 Q Ms. Masson, a few more questions. Can you explain to the  
5 jury, when you were talking about and Mr. Lochridge was  
6 asking you about pictorial similarity, can you explain to the  
7 jury what you were talking about and what you meant in your  
8 deposition?

9 A Yes. Pictorial similarity is something that essentially  
10 at first glance looks very similar. For instance, as far as  
11 handwriting goes, when you look at the handwriting of a lot  
12 of young women they will do that what I call bubble writing,  
13 that very round and styled writing with the little circle I  
14 dots and the circle periods and that sort of thing. Well,  
15 when a document examiner -- or when a lay person looks at  
16 that and they have writing of three or four young women who  
17 all write that style of writing, they may think it's all by  
18 one person. What you have to do is get into the very subtle  
19 features that will differentiate the writing of one person  
20 from that of another person. We also have that, sometimes  
21 document examiners confront that when we have writing of  
22 people of certain nationalities, like writers who first learn  
23 to write, excuse me, Chinese may have a lot of similarity at  
24 first glance when you look at their writing, but actually  
25 when you get into the subtle details, the writing of

1 different people can be differentiated by the set of  
2 individual writing characteristics that define that person's  
3 writing. So that's what I'm talking about is pictorially,  
4 like the writing of teenage girls, you may look at it and see  
5 a lot of similarity just from your first glance, but that  
6 does not necessarily mean anything about whether they are by  
7 the same writer or not.

8 Q And if we look at Exhibit 48, is this, is this what you  
9 were referring to in your deposition as to being pictorially  
10 similar?

11 A Well, I'm saying that these are, at first blush they are  
12 pictorially similar to the genuine signatures of Ms. Trevino.  
13 You look at it and, first, it is the name Maria M. Trevino.  
14 And I think I put that on there. And if you take, for  
15 instance, just the name Maria -- here we go. Ah, it's  
16 working. There you go -- and compare it to just the name  
17 Maria that she writes, it may look somewhat similar, but when  
18 you get into the subtle writing features, the R is not  
19 exactly like hers, there's, along this part here, this is not  
20 a real smooth line, and you get into the subtle features of  
21 the writing and you will find over and over differences.  
22 Plus in this case the writing quality is so significant  
23 because of the slow, slowly drawn characteristic of the  
24 signature, of these two, these two signatures.

25 Q Now, if, based on your training and your experience,

1 Ms. Masson, if someone has permission to sign someone else's  
2 name, would you typically see a simulation of their, of that  
3 person's signature?

4 A In most cases you don't, or you see one that is just  
5 closer to their own signature.

6 Q And so typically if someone gives, your husband gives you  
7 permission to sign his name, you would not typically, the  
8 writer wouldn't typically try to simulate or copy that  
9 signature, they would sign it. Is that what you're saying?

10 A Right. Yes, not in this slowly drawn manner. If your  
11 spouse makes a printed, like in my case, say my spouse makes  
12 a printed R, his first name being Ralph, and I typically  
13 write a cursive one, I might make a printed R, but the rest  
14 of it is going to my own natural writing. I mean typically  
15 I, when I sign a check with his name I write it in my own  
16 handwriting.

17 Q All right. And we talked about this earlier but when you  
18 look at the signatures of Maria Trevino on these two  
19 documents, do you see evidence of it being slow and  
20 deliberate?

21 A In, in, on the builder's and mechanic's lien contract and  
22 on the deed of trust, those are very slow, hesitant,  
23 carefully drawn signatures.

24 Q All right. And based upon that, based upon those  
25 features that you find in that, would you believe that more



1 likely than not that the person, whoever signed it did not  
2 have that person's permission?

3 MR. LOCHRIDGE: Objection, leading.

4 THE COURT: Overruled.

5 THE WITNESS: I don't make a, I don't make any  
6 determination about permission. That's beyond my area of  
7 expertise.

8 BY MR. RUMLEY:

9 Q Okay. And during the -- when you prepared your first  
10 report and you gave your deposition, you did look at a number  
11 of notary or purported notary signatures of Benjamin Frazier,  
12 right?

13 A Yes, sir.

14 Q You heard Mr. Lochridge mention just a little bit ago  
15 that you never mentioned or referenced or looked at Benjamin  
16 Frazier's and that's not true, is it?

17 A It's not.

18 MR. LOCHRIDGE: Well, it's also not what I said,  
19 Your Honor. He's misstating what I said.

20 BY MR. RUMLEY:

21 Q I mean did you look at a number of deeds of trust and  
22 mechanic's lien contracts to look at the purported signature  
23 of Benjamin Frazier?

24 A Yes, sir.

25 Q And can you tell the jury, in looking at those documents,

1 what you found when looking at those purported signatures?

2 A There were at least three different writing patterns and  
3 maybe four different writing patterns. There were at least  
4 three and potentially four, at least four people writing that  
5 name on various documents as notary.

6 Q And did it appear, or did you do an analysis, analysis to  
7 determine whether or not the individuals who were signing Ben  
8 Frazier's names, whether or not they were trying to simulate  
9 it or whether or not they were signing it?

10 A I thought there was a loose effort made to make it look  
11 like his signature, yes.

12 Q When you were examining the original documents in this  
13 case, did you find anything kind of out of the ordinary with  
14 respect to those originals?

15 A To the lien contract and the deed of trust? Yes.

16 Q For example, if we take the deed of trust, did you, when  
17 you were examining -- well, let me back up. The lawyers for  
18 Clayton Homes actually came to your office and brought what  
19 they told you to be the original documents for the deed of  
20 trust?

21 A That's correct.

22 Q Can you tell the jury, when you looked at the original  
23 documents, if there was anything, an anomaly in the original  
24 that kind of stuck out in your mind, that made you wonder  
25 whether or not this was truly the original?

1 A Yes.

2 Q And can you explain to the jury and --

3 MR. RUMLEY: Your Honor, can I approach the witness  
4 and hand her the original deed of trust?

5 MR. LOCHRIDGE: Your Honor, we're going to object to  
6 this. There's not a word about any of this in her report,  
7 there being some anomaly in the originals.

8 MR. RUMLEY: It's discussed in the artifacts of her  
9 report. In fact, Mr. Lochridge asked her about it.

10 THE COURT: Overruled. Go ahead.

11 MR. RUMLEY: May I present this to the witness?

12 THE COURT: Yes.

13 BY MR. RUMLEY:

14 Q One of the things, if you look at the original,  
15 Ms. Masson, can you tell the jury whether or not the  
16 handwriting, the non-preprinted form, if all of that is  
17 original ink?

18 A It is not.

19 Q So what does that tell you?

20 A Well, some of the writing on this document, for instance  
21 the make, model and serial number of the, of the item being  
22 purchased, some of the amounts is in, it's a toner, it's a  
23 photocopy, and then some of it is original ink, so it was odd  
24 that it was partly photocopied, part of the entries that  
25 should have been original handwriting were actually

1 photocopies of handwriting and part of it was original ink.

2 Q If you were to look at, if you look at that document, and  
3 the jury is going to be able to take the original document  
4 back, is all of the handwriting contained on the deed of  
5 trust original handwriting, original ink?

6 A No, it is not.

7 Q Have you seen or has, have any of these lawyers or  
8 Clayton Homes presented you with a true original deed of  
9 trust with all --

10 THE COURT: Could you get, please, sir, to the  
11 podium.

12 BY MR. RUMLEY:

13 Q -- with all ink or all original handwriting?

14 A Not of the deed of trust, no.

15 Q Is there anything else in the deed of trust, in the  
16 original deed of trust, that stuck out in your mind as just  
17 an anomaly of what you would believe to be an original  
18 document?

19 A Well, on the second page -- I processed this with the  
20 electrostatic imaging to look for the indentations of writing  
21 and I found indentations of writing, some of which is on the  
22 first page of the deed, but originally -- there was, there  
23 were indentations of a name where -- on the first page it  
24 says that the undersigned, Maria M. Trevino, Arturo Trevino  
25 are written here, but underneath it, it looked like it was

1 originally just Maria M. Trevino, not, the Arturo was not,  
2 did not indent into there. Now, the original writing from  
3 this also does indent, as what's on here now. But it was  
4 just an odd, odd finding.

5 Q Anything else on the document that you found as an  
6 anomaly of an original document?

7 A I don't remember anything else particularly, other than,  
8 of course, the big key being the signatures.

9 Q Let me hand you --

10 MR. RUMLEY: Your Honor, may I approach the witness?

11 THE COURT: Please.

12 BY MR. RUMLEY:

13 Q The original --

14 THE COURT: You can only question in front of the  
15 microphone.

16 BY MR. RUMLEY:

17 Q Hand you the original builder's and mechanic's lien  
18 contract and the same questions, ma'am, is there anything,  
19 when you inspected the original document that was provided by  
20 Clayton Homes, is there anything that you found that led you  
21 to believe that that is not actually an original document?

22 A Well, again, you had some original writing on the front  
23 and then some that's a photocopy image. And, actually, I  
24 think that the one that had the "and Arturo Trevino" may have  
25 been the builder's and mechanic's lien contract, not the deed

1 of trust, the one where it had not had the Arturo Trevino  
2 into the second page. Let me correct that.

3 Q As far as the indentations that you found, did you find  
4 any indentations of the purported signatures of Arturo  
5 Trevino or Maria Trevino on any of the documents?

6 A I did not, no.

7 Q Did you find the notary name, printed name, and the  
8 notary signature indented into any of the other pages of  
9 either of those documents?

10 A I believe they do indent into the first and second pages.

11 Q And what does that tell you as a document examiner?

12 A Well, that tells me that the notary page was on top of  
13 the document when the notary signature and these names were  
14 written.

15 Q And when you look at that indentation, if the signatures  
16 of Arturo Trevino or Maria Trevino were signed with that page  
17 over the other ones, would you expect to see an indentation  
18 of those signatures onto whatever pages were below?

19 A Yes.

20 Q And you did not find, in examining all the originals, any  
21 indentations of their signatures?

22 A That's correct.

23 Q And so, does that allow you to conclude that whoever  
24 signed the Trevinos' names did so without that page on top of  
25 any of the other pages?

1 A That it's unlikely it was on top of any of the other  
2 pages when those signatures were put on there, yes.

3 Q Okay. As far as different ink, can you tell if there is  
4 different color ink on the original documents?

5 A Well, some of it is obviously blue and some is, is black,  
6 I believe. I'm not sure. The signatures of the Trevinos  
7 reacted similarly to all the tests that I could do, which are  
8 non-destructive, non-chemical tests of the, of those two  
9 signatures, but other than that I don't remember what I found  
10 as far as the writing on the front.

11 Q Okay. As far as the printed names of Arturo Trevino and  
12 Maria Trevino on those documents, were those indented into  
13 any of the other pages?

14 A From the first page?

15 Q Yes, ma'am.

16 A Yes, I believe they indented into the second page.

17 Q How about with respect to the signature?

18 A No, they did not indent.

19 Q All right, ma'am. That's all I have, thank you.

20 THE MARSHAL: Your Honor, the jury would like a  
21 break.

22 THE COURT: Twenty minutes. Would you please stand  
23 for the jury.

24 (Jury exits at 3:03 p.m.)

25 THE COURT: Anything to take up outside the presence

1 of the jury? Did you want water up there?

2 THE WITNESS: I'm fine, thank you.

3 THE COURT: Okay.

4 (Recess at 3:03 until 3:24 p.m.)

5 THE COURT: Are you-all ready?

6 MR. LOCHRIDGE: Yes, Your Honor, we are.

7 MR. RUMLEY: Yes, Your Honor.

8 (Jury enters at 3:24 p.m.)

9 THE COURT: Thank you. You may be seated.

10 Mr. Gutierrez, or Mr. Rumley, are you-all finished?

11 MR. RUMLEY: I pass.

12 THE COURT: Mr. Gutierrez?

13 MR. B. GUTIERREZ: Yes, Your Honor.

14 THE COURT: Mr. Lochridge?

15 MR. LOCHRIDGE: Just a few more questions, Your

16 Honor.

17 THE COURT: Sure.

18 RECROSS-EXAMINATION

19 BY MR. LOCHRIDGE:

20 Q Mrs. Masson, you have there in front of you the originals  
21 of the deed of trust and the builder's and mechanic's lien?

22 A Yes, sir.

23 Q And you were talking about some indentations that you had  
24 found. I wasn't sure I followed all that. But I think we  
25 went over those indentations or at least generally at your



1 deposition, and my recollection is that you found  
2 indentations but it didn't play any role whatsoever in your  
3 opinion as to the authenticity of the signatures. Is that  
4 correct?

5 A Yes, that's correct.

6 Q You couldn't draw any conclusions from them, they were  
7 just some indentations indicating when things may have been  
8 signed and what was under it at the time, right?

9 A Well, they were just indentations. It didn't necessarily  
10 indicate anything other than that they didn't match, they  
11 didn't always match what was on the first page. The  
12 indentations into the second page were not always of the  
13 information that was on the first page.

14 Q Okay. Meaning that the first page may have been signed  
15 over something else at that time or over a hard surface and  
16 not on top of the document at all?

17 A Or that the first page, there had been a different first  
18 page at some time.

19 Q Okay. And if you'd look at that, that brings me to the  
20 next question. You talked about there being different ink  
21 and so forth there on the first page?

22 A Yes.

23 Q And does it appear as though that they had partially  
24 filled it out and then made some mistakes and whited it out  
25 and then put some different colored ink in there where the

1 numbers are?

2 A Well, if they whited it out they did it, they photocopied  
3 it and then rewrote over it, but there are several different  
4 kinds of things in here so -- I don't know exactly what  
5 happened.

6 Q Okay. Let me just, though, so that --

7 MR. LOCHRIDGE: May I approach just to pick up the  
8 document, Your Honor?

9 THE COURT: Yes, sir.

10 MR. LOCHRIDGE: Could we go on the Elmo? Maybe we  
11 are. Okay.

12 BY MR. LOCHRIDGE:

13 Q What I was trying to see here, where I've got my finger  
14 here pointing to the \$40,815 and so on, that appears to be in  
15 original ink over what had been written in prior and then  
16 copied, is that correct?

17 A Yes, this part right in here is original blue ink and  
18 this here, but there is some evidence that, that at least on  
19 an earlier generation there was another amount written in  
20 here, and I guess on the earlier copy it was whited out --

21 Q Right.

22 A -- and then it was copied and -- but then there's some  
23 that's original ink.

24 Q It's that last that I was trying to point out because it  
25 got the numbers mixed up here with the 40,000 written out but

1 they forgot to change where it had been put in numeral form  
2 and it appears they tried to fix that but hadn't completely  
3 fixed it.

4 A Or, I mean I'm not going to say what they were trying to  
5 do, but the amounts don't agree, you're correct.

6 Q Okay. Now, the last thing I want to ask you about is --  
7 if you could put 96.30-, page 33, up on the screen, please?  
8 All right. And this is one where you concluded that the  
9 Cesar Flores was definitely his signature, correct?

10 A I don't remember if it was definite or highly probable  
11 but it, but certainly a strong degree of certitude that it  
12 was the --

13 Q I think in your supplemental report you went from highly  
14 probable to definite.

15 A To definite, okay.

16 Q Does that sound correct?

17 A It could be.

18 Q Okay. And then on Alvin King I think you said probably  
19 not, wasn't very strong but a probably not.

20 A I said, I think it went from inconclusive to probably  
21 not, is my memory.

22 Q All right. And did you draw any conclusion from the fact  
23 that Cesar Flores' signature was, in your mind, definitely  
24 his own but Mr. King's might not have been his, did you draw  
25 any conclusions from that fact? That you had a document with

1 one definitely signed by Mr. Flores and then one probably not  
2 signed by the other?

3 A All I can do is report on the handwriting.

4 Q Okay.

5 A That's all I, all I can do.

6 Q All right. And then we've got sort of the reverse on  
7 page, Exhibit 96.34. Did you turn it? And I believe on this  
8 one you said definite on both of them. You said definitely  
9 Alvin King signed it, correct?

10 A I believe so.

11 Q And I think is true on the other one. And then  
12 definitely Cesar Flores did not sign it, right?

13 A That's my memory, yes.

14 Q And do you draw any conclusions from the fact that you've  
15 got definites for one and not the other on these  
16 corresponding powers of attorney?

17 A Yes, I draw the conclusion that Mr. King did sign it and  
18 Mr. Flores did not.

19 Q And vice-versa on the other?

20 A Right, that's my conclusion.

21 Q Okay. But each one has an original signature of one of  
22 the parties to the retail installment contract?

23 A And a non-genuine signature of the other.

24 MR. LOCHRIDGE: Nothing further, Your Honor.

25 THE COURT: Thank you. Anything further?

1 MR. RUMLEY: Nothing further, Your Honor.

2 MR. B. GUTIERREZ: Nothing further, Judge.

3 THE COURT: Thank you, ma'am. You may stand down.

4 Call your next witness.

5 MR. LOCHRIDGE: Yes, Your Honor, we call Larry

6 Stewart.

7 THE COURT: I thought it was Mr. --

8 MR. LOCHRIDGE: Oh, I'm sorry.

9 THE COURT: I thought it was -- it's his case.

10 MR. LOCHRIDGE: I'm jumping way ahead of myself,

11 Your Honor.

12 THE COURT: All right.

13 MR. LOCHRIDGE: I apologize.

14 MR. RUMLEY: Your Honor, however, we rest, so

15 Mr. Lochridge must have read my mind.

16 THE COURT: Well, there you were right and didn't

17 even know it.

18 MR. LOCHRIDGE: Every blind hog finds an acorn once

19 in a while.

20 MR. SOLTERO: Your Honor, may we approach?

21 THE COURT: Yes, thank you.

22 (Bench conference on the record)

23 THE COURT: You have microphones. This is you-all's

24 microphone here.

25 MR. SOLTERO: Your Honor, actually, there --

1 THE COURT: Isn't it incredible what we can do just  
2 sitting here?

3 MR. RUMLEY: You should see my briefs.

4 MR. SOLTERO: Your Honor, there's actually two  
5 motions. One is Vanderbilt and CMH's Rule 50 motion for  
6 judgment as a matter of law on all claims of the Trevinos, at  
7 the close of the Trevinos' evidence, which we incorporate  
8 right now fully by reference, and I'll hit some of the high  
9 points. The second one is Clayton Homes, Inc.'s Rule 50  
10 motion for judgment as a matter of law on all of the claims  
11 of the Trevinos at the close of the evidence by the Trevinos.  
12 In other words one of just the Clayton Homes entity, which  
13 there's been no evidence about anything they have done. The  
14 other one pertaining to Vanderbilt and CMH as well, which I'm  
15 tendering to the Court, and also we're filing electronically  
16 with a proposed order.

17 THE COURT: I consider that you're electronic filing  
18 even if it's not this minute, it's done contemporaneous with  
19 your oral motion.

20 MR. SOLTERO: Thank you very much. May I briefly go  
21 over these or --

22 THE COURT: Yes.

23 MR. SOLTERO: And I know that Your Honor likes to  
24 read it.

25 THE COURT: I would prefer it, but --

1 MR. SOLTERO: I just want to make sure I get this  
2 full record made.

3 THE COURT: What about your Clayton Homes, what  
4 about the Clayton Homes?

5 MR. RUMLEY: We've proved that up throughout their  
6 case and then their CHI overall with the documents that are  
7 in evidence. All of the paid out departments say Clayton  
8 Homes, Inc. The appraisal in this case says Clayton Homes,  
9 Inc. All of the documents.

10 THE COURT: Okay, go ahead.

11 MR. SOLTERO: And, Your Honor, none of that has  
12 anything to do with the claims that they have brought in this  
13 case. They charge fraud. Let's start with first the common-  
14 law fraud. They never reviewed anything, never relied on  
15 anything. There's no actual or justifiable reliance of any  
16 kind by the Trevinos. There's -- we move for a directed  
17 verdict on whether there's legally sufficient evidence of a  
18 material misrepresentation, that there was any reliance, as I  
19 just mentioned, that there was any damages that proximately  
20 were caused or proximately caused by any alleged  
21 misrepresentation. As a matter of fact, there's been no  
22 evidence of any damages. Your Honor has already ruled as a  
23 matter of law that there's no mental anguish damages. So  
24 they have no damages as far as their common-law fraud claims.  
25 And we otherwise incorporate the motion in full on that

1 point. As to civil conspiracy, Judge, companies that are  
2 interrelated can't conspire with themselves normally. In  
3 addition --

4 THE COURT: I didn't, I think, I thought they were  
5 separate entities. I get so confused.

6 MR. SOLTERO: Well, they are separate entities but  
7 they are related, and generally, parents generally --

8 THE COURT: So what one -- does the other  
9 incorporate?

10 MR. SOLTERO: No, not exactly, Your Honor, it's just  
11 that some --

12 THE COURT: Well, let me tell you, it's going to  
13 have to be three, if you're telling me these are three  
14 separate entities, they can conspire with each other. Now,  
15 employees can't conspire, cannot conspire with their employer  
16 corporation, but if these are employees of the other  
17 corporation let me know about it.

18 MR. SOLTERO: Well, the only employees, the only  
19 company that employed anybody who filed any liens would be  
20 CMH Homes, Inc., so none of the others had anything to do  
21 with the filings of liens.

22 THE COURT: Wasn't the person who signed on them, on  
23 the releases, was an officer of two of these?

24 MR. SOLTERO: Well, Your Honor, Your Honor has  
25 granted summary judgment on the release of the claims if they



1 have anything arising with the October 2005 releases.

2 MR. RUMLEY: Actually, I --

3 THE COURT: I figure that there's still something  
4 left.

5 MR. SOLTERO: And so there's no basis, there's no  
6 underlying tort for the civil conspiracy claim.

7 THE COURT: Okay.

8 MR. SOLTERO: There's no meeting of the minds, it's  
9 been proved, no object to be accomplished, no unlawful  
10 purpose or lawful purpose by unlawful means, no damages  
11 because of proximate cause, and so they failed to present  
12 legally sufficient evidentiary basis for a reasonable jury to  
13 find that the defendants were aware of any harm or wrongful  
14 conduct or a basis for a finding of conspiracy. Similarly,  
15 Your Honor, we move for a directed verdict under the Chapter  
16 12 property code, fraudulent lien statute. There's  
17 insufficient, legally insufficient evidence for a jury to  
18 find a violation of that under all three prongs. They failed  
19 to present legally sufficient evidence that the documents or  
20 other records at issue were fraudulent liens, that the  
21 defendants knew that the documents were the record for  
22 fraudulent liens, particularly so with largely two defendants  
23 who didn't have any agents involved with the filings of  
24 liens. The Trevinos failed to present a legally sufficient  
25 evidentiary basis to conclude that there was a fraudulently

1 filed. And there's also insufficient basis to conclude that  
2 the Trevinos have suffered any kind of financial or other  
3 injury. And there's no predicate for punitive damages under  
4 any other claims or causes of action, and there has certainly  
5 been no finding that would justify a submission on clear and  
6 convincing gross negligence, either one of the prongs for  
7 fraud or malice, so we would move for a directed verdict on  
8 all the punitive damage claims. Similarly with any other  
9 claim for actual damages. Your Honor, I would mention that  
10 we also move for a directed verdict on the declaratory  
11 judgment claims where they try to assert claims on behalf of  
12 Flores and King that they can't because they don't have  
13 standing to do. And finally on statute of limitations,  
14 unequivocally the only claims remaining involve, of the  
15 Trevinos, involve liens from 2002. Ms. Trevino filed suit in  
16 2009, Mr. Trevino intervened in 2010.

17 THE COURT: I think I've already gone there.

18 MR. SOLTERO: And, Your Honor, we believe that the  
19 discovery rule, that --

20 THE COURT: I've already made a ruling on the  
21 discovery rule.

22 MR. SOLTERO: Yes, Your Honor, we, and we would --

23 THE COURT: Move on.

24 MR. SOLTERO: Well, we contend that it would not  
25 apply and that they have not shown any evidence of reasonable

1 diligence. So for all these reasons and within our motion,  
2 Judge, we would move for a directed verdict.

3 THE COURT: Well, I am the one with no reasonable  
4 intelligence or --

5 MR. SOLTERO: No, Your Honor, you are. I'm trying  
6 to make sure I'm making a proper record, and --

7 THE COURT: I understand, but you've made it with  
8 your filed documents.

9 MR. SOLTERO: Yes, Your Honor.

10 MR. RUMLEY: Your Honor, we would, on behalf of the  
11 Trevinos we would move for a judgment as a matter of law on  
12 1202. We've proved all three elements by the defendants  
13 themselves. For example, Mr. Booth testified that the intent  
14 behind the document is if the customer doesn't pay you're  
15 going to take the land under the terms. He questioned them,  
16 "At the moment those documents are filed that is the intent,  
17 is to make the Trevinos pay or risk losing their land,  
18 correct?" David Booth testified 1202 doesn't, doesn't  
19 require that they actually file, but it's used the documents,  
20 each of the three companies, Clayton companies used the  
21 documents in some form or capacity. There's no evidence that  
22 these documents were properly notarized. And so we believe  
23 as a matter of law that the documents are fraudulently  
24 notarized and we believe that the Court in the summary  
25 judgment has already found --

1 THE COURT: He's disagreeing with you.

2 MR. RUMLEY: I can understand. The Court already  
3 found that our element number 2 was already proved as a  
4 matter of law, but even in the event the Court doesn't find  
5 that we put on --

6 THE COURT: Well, I have given that thought, but.

7 MR. RUMLEY: We put on sufficient evidence that they  
8 filed the lien, I don't think there's any dispute that they  
9 filed the lien in an effort to record their interest in the  
10 land. I don't think there's any dispute --

11 THE COURT: He'd prefer the land that the jury would  
12 (indiscernible).

13 MR. RUMLEY: And so, and so that the issue, the only  
14 issue was whether or not the document was fraudulent with  
15 respect to the notary. We believe that it's fraudulent as a  
16 matter of law. They have not put on any evidence that it was  
17 properly notarized. In order for a lien document to be filed  
18 in the State of Texas it must be properly notarized.

19 THE COURT: That's true, but it doesn't mean there  
20 isn't a lien that could be enforced against the Trevinos if  
21 their signatures are not forged.

22 MR. RUMLEY: But if the testimony is is their  
23 intent, the intent as to the defendant, we believe through  
24 the testimony of Paul Nichols and David Booth that they both  
25 expressed their intent in filing those and the purpose for

1 those, and so we would move for a judgment as a matter of  
2 law.

3 THE COURT: Thank you.

4 MR. SOLTERO: We would just respond at that point,  
5 Your Honor, that that should be denied. Some of the reasons  
6 Your Honor mentioned and in our motion -- in our motion for a  
7 judgment as a matter of law, and the evidence we presented,  
8 there were no fraudulent liens.

9 THE COURT: Thank you.

10 MR. SOLTERO: Thank you.

11 (Bench conference ends)

12 THE COURT: I'll carry those forward. Thank you.  
13 Now, you want to call a witness?

14 MR. LOCHRIDGE: Yes, Your Honor.

15 THE COURT: Thank you.

16 MR. LOCHRIDGE: Mr. Larry Stewart.

17 THE CLERK: Please come forward.

18 LARRY STEWART, PLAINTIFF'S WITNESS, SWORN

19 THE CLERK: Thank you. Please be seated.

20 THE COURT: You may proceed, Mr. Lochridge.

21 MR. LOCHRIDGE: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. LOCHRIDGE:

24 Q Would you introduce yourself to the jury, please,  
25 Mr. Stewart?

1 A Yes, sir. My name is Larry Stewart.

2 Q Where do you live?

3 A I live in Central California in a city called San Luis  
4 Obispo.

5 Q All right. And what do you currently do for a living?

6 A I run my own company. I'm the chief forensic scientist  
7 for Stewart Forensic Consultants, named after myself.

8 Q Let's dig back into your background a little bit. Where  
9 were you born and raised?

10 A I was born in Asheville, North Carolina. I lived there  
11 about 12 years.

12 Q And where did you go to school?

13 A You mean higher education?

14 Q Yes.

15 A I have three college-level degrees. I have an associate  
16 of arts degree from Florida Technological University, which  
17 is in Orlando, Florida. I have a bachelor of science in  
18 forensic science degree from the University of Central  
19 Florida, which is also in Orlando, Florida. And then I have  
20 a master's of forensic sciences degree from Antioch  
21 University, which is in Yellow Springs, Ohio.

22 Q All right. I believe 287 is in. I'm going to show it up  
23 on the Elmo so that you won't have to remember all this.  
24 This is your resume, so to speak?

25 A Yes, sir.

1 Q Okay. And we've been through a little bit of your  
2 education here, in particular a bachelor of science in  
3 forensic science and a master of forensic science. Can you  
4 tell us in more detail what kind of education you had in the  
5 forensic sciences?

6 A Yes. There's not a specific college-level degree for  
7 most of the subject areas of forensic science. There's  
8 general degrees. I got into the field when it wasn't  
9 popular, it wasn't on television, it was just another,  
10 another possible field and it was an alternate to chemistry  
11 for me. So I got my first degree, the bachelor of science  
12 degree in forensic science, and that taught me how to use a  
13 microscope properly, taught me the different scientific  
14 equipment that could be used in solving crime. And then I  
15 continued with that with the master's degree and there just  
16 got it at a higher level. I had specific courses on  
17 questioned documents and specific courses on aspects of  
18 documents during that training as well.

19 Q And in the courses on questioned documents did you get  
20 into handwriting analysis?

21 A Certainly.

22 Q Is that part of being an expert in the questioned  
23 documents field?

24 A That is one segment of being an expert in questioned  
25 documents, correct.

1 Q Now, looking here at the very specialized courses that  
2 you've had -- let me turn the page -- we see that you've had  
3 ink and paper analysis seminar with the United States Air  
4 Force?

5 A Yes.

6 Q What was that all about?

7 A That's looking at a document to determine whether or not  
8 the document is fraudulent or not. Was the ink, did it exist  
9 at the date the document is dated, is the paper altered, did  
10 they do anything to create a fraudulent document.

11 Q The next deals with high-pressure liquid -- I cannot get  
12 that word.

13 A The word is chromatography.

14 Q Chromatography? Okay. Mass spectrometry. Tell us what  
15 you learned there.

16 A That's a course of chromatography and mass spectrometry.  
17 Chroma means color and tography is the science of, so it's  
18 basically looking at the components in ink and paper and  
19 documents to try to figure out, again, are they fraudulent or  
20 not.

21 Q Then the next one that I have highlighted is the  
22 questioned document course for the United States Secret  
23 Service. Did that deal with the aspects of handwriting and  
24 questioned documents?

25 A Certainly, yes.



1 Q What about the next three that I've highlighted there,  
2 names that I can't possibly pronounce, in June and September  
3 and January of '86. '94 and 2000?

4 A The first two there, the Fourier Transform Infrared  
5 Spectroscopy Course and the Scanning Electron Microscopy  
6 Course, are specialized courses on fancy microscopes.

7 Q You could have just put fancy microscopes.

8 A I could have, yes.

9 Q All right.

10 A The next one is the ASCLD lab inspector training course.  
11 ASCLD stands for the American Society of Crime Laboratory  
12 Directors. That is an organization that I am a member of and  
13 it is the organization that polices the forensic laboratories  
14 around the country, and that particular training course  
15 taught me how to go to those laboratories around the country  
16 and decide whether or not they are using proper techniques  
17 for doing things like questioned document analysis.

18 Q And including handwriting analysis?

19 A Yes, sir.

20 Q All right. Now, let's turn to your work experience.  
21 We'll leave out being a lab tech at the University of Central  
22 Florida and move to 1979, that's 30 years ago, you became a  
23 forensic chemist with the Bureau of Alcohol, Tobacco and  
24 Firearms?

25 A Yes, sir.

1 Q What were your responsibilities there in the area of  
2 questioned documents?

3 A That was a three-year period with the Bureau of Alcohol,  
4 Tobacco and Firearms. Part of the time was spent doing  
5 chemistry in different areas of forensic science. Part of  
6 that was spent looking at document analysis and doing  
7 chemistry on documents.

8 Q Then in July of 1982 to June of 2005, looks like  
9 basically most of your career, who were you with?

10 A The United States Secret Service.

11 Q And walk us through your progression through the United  
12 States Secret Service insofar as it deals with forensic  
13 science and handwriting, questioned documents issue?

14 A Certainly my entire career there has dealt with forensic  
15 analysis of documents. It started as a counterfeit  
16 specialist. I was tasked with determining if a piece of  
17 money was counterfeit or if an identity document was  
18 counterfeit. And that jurisdiction handles all of that for  
19 the country, so any kind of false identity document or false  
20 monetary document is part of the jurisdiction of the Secret  
21 Service. So I was tasked in becoming an expert in that and I  
22 did that. I expanded from that and developed a credit card  
23 library for them so that we could actually look at  
24 counterfeit credit cards and figure out who produced them and  
25 how they were produced. From there I became what's called

1 the, a questioned document examiner. So to do that with the  
2 Secret Service I had to go through a two-year training  
3 program with them. They had a number of experts in the field  
4 of questioned document analysis and I had the luxury of  
5 training under some of the best in the world. That two-year  
6 training program yielded me with a certificate from them  
7 certifying that I was an examiner of questioned documents,  
8 which includes handwriting.

9 Q Then it goes into the lead instrumental analysis section  
10 and instrumental and computer analysis sections. Tell us  
11 what you did there in the area of questioned documents.

12 A That was when I was becoming a supervisor and they placed  
13 me in a portion of the questioned document branch that  
14 handled the instrumental or chemistry analysis of documents,  
15 and then later on it included documents that were created by  
16 computer.

17 Q Next, which I didn't highlight, senior document examiner,  
18 national expert for the United States Secret Service. What  
19 was your role there with regard to questioned documents?

20 A That was another senior role. That was, there's only one  
21 of those in the country, and that particular role had me  
22 heading up a section of the questioned document laboratory  
23 that dealt with document fraud when documents were created  
24 using ink and paper.

25 Q Okay. Then you became chief of the questioned document

1 branch in the United States Secret Service?

2 A Yes, sir. There I was in charge of the entire questioned  
3 document branch, so I was in charge of the handwriting  
4 examiners, the people who use chemistry for the examinations,  
5 and the people that use computers for the examinations.

6 Q I'll skip to laboratory director, chief forensic  
7 scientist for the United States Secret Service. What did you  
8 do in that role with regard to questioned documents?

9 A Well, I was their chief forensic scientist. I was the  
10 head forensic scientist for the Secret Service. In that role  
11 I was also in charge of the questioned document branch. I  
12 had a reviewing capacity of all of the reports that went out,  
13 all the technical aspects and the administrative aspects  
14 within the branch, questioned document branch, and then I  
15 also carried my own caseload, I also did cases still.

16 Q And then going through, it looks like you've been an  
17 instructor in various studies regarding questioned documents,  
18 is that correct?

19 A Yes, sir, I've been an instructor in many of the  
20 different federal agencies in this country. I've also  
21 instructed for foreign agencies and many universities and  
22 colleges.

23 Q And it looks like you have spoken around the country on  
24 issues involving questioned documents?

25 A Yes, sir, around the country and around the world as

1 well.

2 Q Just picking them out randomly, at UCLA, the forensic  
3 examination of financial and identity documents, the American  
4 Society of Questioned Documents, examiner fees.

5 A Yes, sir.

6 Q Okay. Now, looking at your certifications, I see that  
7 you are certified with the Secret Service as an accredited  
8 examiner of questioned documents, and what does that mean?

9 A Well, that means I went through their two-year training  
10 program and did all of their tests and went through and  
11 examined cases and they determined that I was an examiner of  
12 questioned documents and they certified me as such. I have a  
13 certificate on my wall that's got the number 2 on it, which  
14 means I was the second person ever certified by them as an  
15 examiner of questioned documents.

16 Q And since that time to today have you been involved in  
17 the examination of questioned documents including handwriting  
18 analysis?

19 A Yes, sir, I have.

20 Q I see that you were elected to the board of directors,  
21 the American Society of Crime Laboratory Directors?

22 A Yes, sir.

23 Q And certified forensic consultant for American College of  
24 Forensic Examiners Institute.

25 A That's correct. That's the second certification that

1 required testing by an independent college to determine  
2 whether or not I had the attributes necessary to be a  
3 forensic consultant.

4 Q I'm not going to go much further, but you were elected to  
5 the board of directors for the American Board of Forensic  
6 Examiners last year?

7 A Yes, sir.

8 Q All right. Now, have you written in the area of  
9 questioned documents?

10 A Yes. I've written and published numerous articles on  
11 questioned documents and forensic science in general, and  
12 I've published two books on the subject as well.

13 Q All right, I'm not going to go through all those. At the  
14 bottom here the two books that you've written are "Identity  
15 Theft" and "Document Examination."

16 A Yes, sir.

17 Q Now, have you testified over the years involving  
18 questioned documents in some fairly notable cases?

19 A Yes, sir, I believe I have.

20 Q For example, the Jon Benet Ramsey case, did you testify  
21 or were you involved in examining questioned documents in  
22 that case?

23 A I was involved in examining the kidnap letter in the  
24 case, but I was brought into the case about a year after the  
25 case started. My laboratory was requested to do a

1 handwriting analysis and also anything we could on the kidnap  
2 letter. We produced reports and it ended up going to a grand  
3 jury but there was no indictment.

4 Q Okay. I see where you worked on the Unabomber case.

5 A Yes, sir.

6 Q Can you tell us what the nature of the work you did there  
7 as a questioned document examiner?

8 A There were bombs that were sent by the Unabomber that  
9 were not exploded, they didn't explode when the person  
10 received them. It was a Postal Service case at that point  
11 because these bombs were sent through the Postal Service and  
12 that made it a federal crime, so I was asked by the Postal  
13 Service to examine some of these unexploded bombs as far as  
14 the packaging material to try to figure out who the Unabomber  
15 was. In that case I was able to track it down to a specific  
16 make and model of the machine that was used to make the label  
17 on the return packaging, and that actual machine was found in  
18 his shack when he was found. He ended up pleading guilty so  
19 there was no trial.

20 Q I see that you worked on the John Wilkes Booth diary  
21 matter. Did that involve questioned documents?

22 A Yes, it did. The John Wilkes Booth diary was found a  
23 number of years back but it was missing nine pages that were  
24 around the time that was critical in the case, and so my  
25 laboratory was brought into that case and we were asked to

1 look at the document as it existed now and try to figure out,  
2 if we could, anything that was on those nine pages that may  
3 figure out what happened during the time that Lincoln was  
4 shot and Booth was found.

5 Q And was that an indentation analysis type of job?

6 A It involved that as well as other aspects, yes.

7 Q Okay. What about the Ivan the Terrible case, John  
8 Demjanjuk?

9 A John Demjanjuk was a person who was identified by people  
10 as being known as Ivan the Terrible. He had a trial in  
11 America approximately 30 years ago, I believe, where he was  
12 found guilty of that. He was living in America after World  
13 War II. And that trial was overturned by the Israeli  
14 government when he was tried there and so he was allowed back  
15 into the U.S. government, or U.S. country, to live here. The  
16 Department of Justice then decided that they wanted to try  
17 him again, so because of double jeopardy rules they couldn't  
18 try him on the same, for the same reasons, so they tried him  
19 based on his identity documents that he used to come into  
20 this country back after World War II, and that's when I came  
21 into the case. I was asked to look at his identity  
22 documents, determine if it truly belonged to him and had been  
23 altered or changed in any way. My agency did the examination  
24 of the document, the identity document for purposes of the  
25 ink, the paper, the handwriting, staple holes, a photograph



1 that was on it, all different aspects of the document were  
2 examined. The case, he was found guilty and then he was sent  
3 to Germany where he's going under trial now. And I was asked  
4 by the Department of Justice from this country as well as the  
5 German federal government to go and attend that trial and  
6 testify as an expert, which I did this past June.

7 Q And were you in charge of the handwriting and ink and  
8 paper analysis that went into that particular case?

9 A It was all done under my direction, yes.

10 Q I'm not going to go -- you also were involved in the  
11 Martin Luther King and Kennedy assassination re-  
12 investigation?

13 A Yes, I was.

14 Q The Martha Stewart case?

15 A Yes, sir.

16 Q The 9/11 terrorist attack case, the D.C. sniper  
17 investigation, those are all investigations that you played a  
18 role in, is that correct?

19 A Yes.

20 Q Some of these while you were with the Secret Service and  
21 some after you had left?

22 A That's correct.

23 Q All right. Now, let's go to this case. Before we do  
24 that, what are the types of instruments -- and you were here  
25 for Mrs. Masson's testimony, weren't you?

1 A Yes, I was.

2 Q You were sitting back in the back. She described some of  
3 the equipment that she had in her laboratory. What kind of  
4 equipment do you have access to, either in your laboratory or  
5 at the university, to do handwriting and questioned documents  
6 work?

7 A I have access to the same equipment that she spoke of.  
8 In the field sometimes you have a different brand name but it  
9 does the same function. And then I have access to many other  
10 types of instruments that can sometimes be used in document  
11 analysis through the university. I am a part-time teacher at  
12 the Cal Poly, which is California Polytechnic University, in  
13 the city that I live in, and there I teach forensic science  
14 for them, and as part of that I get access to their  
15 equipment, so I can use some of the more expensive equipment  
16 that it would not be possible for someone in private practice  
17 to own without spending a half million or a million dollars  
18 for it. I get access to that through the university.

19 Q Now, in this particular case, what were you asked to do?

20 A I was originally asked to review the work that was done  
21 by Ms. Masson and to look at a number of questioned  
22 documents, documents that one side or another in the case  
23 weren't sure if they were truly signed by an individual, so I  
24 was asked to look at those documents in addition to examine  
25 the work done by Ms. Masson.

1 Q And could you just tell the jury what the general  
2 methodology is when you as a handwriting expert is assigned  
3 the task of trying to authenticate various signatures? What  
4 is the protocol?

5 A Well, you can't really believe anybody in a case, so you  
6 have to kind of start from a point of neutrality, and that's  
7 the way I always conduct my examinations. I don't know who  
8 is telling the truth and who is not, so I start with not  
9 knowing and I look for evidence that sways me one direction  
10 or not. To do that I use known documents, in other words,  
11 documents where somebody has admitted that they signed, as a  
12 comparison tool. So you put all of those together that you  
13 can, all of the known documents that you find together, and  
14 you look at how the person writes, what is their method of  
15 writing, how varied is their writing, how closely do they  
16 write each time or how much different do they write each  
17 time, and you make notes of all that, and then you bring in  
18 the questioned writing and you decide does this questioned  
19 writing fall inside these known writings or is it outside and  
20 I don't know what's going on. So that's how I handled this  
21 case.

22 Q And you saw the demonstrative that we had on the nine-  
23 point scale of handwriting opinions?

24 A Yes, I did.

25 Q All right.

1 MR. LOCHRIDGE: Could you pull up 288? We're going  
2 to do it on the Elmo here, I think. Just a second.

3 There may be some question, Your Honor. We would offer  
4 Exhibit 288. I don't think that there's an objection.

5 MR. RUMLEY: No objection.

6 THE COURT: It's been admitted. Oh, no, I'm sorry.  
7 288?

8 MR. LOCHRIDGE: Yes, Your Honor.

9 THE COURT: It's admitted.

10 (Plaintiff's Exhibit 288 admitted into evidence)

11 MR. LOCHRIDGE: Thank you.

12 BY MR. LOCHRIDGE:

13 Q This is pretty much the same thing we were looking at  
14 with Ms. Masson, we've just put some colors on it. And could  
15 you just give us a thumbnail sketch of what the nine-point  
16 scale means to you as a handwriting expert?

17 A Yes, sir. If you look at the middle of that scale you'll  
18 see the no conclusion. That's where I start. I start with  
19 not knowing who wrote something and who didn't write it when  
20 it comes to the questioned examination. I then look for  
21 evidence that takes me either to the left or the right of  
22 that middle, and that evidence comes from a number of  
23 different sources. You look for the uniqueness of the  
24 writing. In other words, we're all taught as, since we speak  
25 English we're taught in grammar school how to write the

1 capital A and how to write a lower case A and then all of the  
2 characters, and in those first few formative years we're  
3 actually taught to copy those letters off of a board and  
4 we're graded on how well we copy them. It's not until after  
5 that that we start developing uniqueness in our writing, and  
6 uniqueness in our writing comes from our maturity as an  
7 individual, our education, how much writing we do, and all of  
8 those things go into making individual characteristics in  
9 writing that can be identifiable. You have to be very  
10 careful in it, though, because there's a lot of things that  
11 has to go into making a good handwriting opinion. There's a  
12 lot of inconsistencies in handwriting opinions out there and  
13 that degree of carefulness is very important. If you look at  
14 this nine-point scale, to the left and the right of no  
15 conclusion you have indications, either did or did not write  
16 something. As Ms. Masson indicated, that is, that is an  
17 opinion that means that we found something that indicates to  
18 us they either did or didn't write it, there's some  
19 characteristic there that means that to us. I disagree with  
20 one aspect of what I heard in that I believe it does mean  
21 more likely than not. She said that it did not. But it  
22 certainly has to mean that. You're finding something that  
23 indicates to you that either the person did or did not write  
24 it, so it has to be more likely than not. From there you go  
25 to probably did write or probably did not write, and although

1 handwriting examiners are notorious for not wanting to put  
2 percentages on things, that means quite a bit more likely  
3 than not, or that it's quite a bit more likely or quite a bit  
4 more likely than not that the person did write it. And when  
5 you get to the highly probable rating, that is typically  
6 referred to as virtually certain, so you're up there almost  
7 positive but not quite that the person either did or did not  
8 write the signature or the writing. And then you're left at  
9 the very ends with an identification or definitely did or  
10 definitely did not write.

11 Q Now, you heard Mrs. Masson talk about not having  
12 considered several known writings of Mr. Trevino in her  
13 testimony. Is that consistent with the proper methodology of  
14 a handwriting expert?

15 A In my opinion, no, it's not something that I would have  
16 allowed in my laboratory. It's, you not only look at  
17 everything you're provided but many times you ask for  
18 additional information if there's not enough there.

19 Q Now, I want to go through some of Maria Trevino's writing  
20 but I want to do this in some detail to show kind of each  
21 step of what you do, because you have, you've spent a lot of  
22 time on this project, haven't you?

23 A Many, many hours on this case, yes.

24 Q I think you were hired in the summer and do you, we've  
25 got your invoices here somewhere but do you have an idea of

1 how many hours you've spent studying these signatures?

2 A I was hired in June and I believe I've worked  
3 consistently on an average of about a week and a half every  
4 month since then.

5 Q And we can do the math on that but it's over a hundred  
6 hours that you've worked on this case analyzing these, this  
7 handwriting?

8 A That's correct.

9 Q Okay. Well, let's, I want to try to go through it  
10 crisply as we can because we've got a lot to cover. Let's go  
11 to 194.24. First of all, before we do that, or as we do  
12 that, you have --

13 MR. LOCHRIDGE: May I approach, Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. LOCHRIDGE:

16 Q Okay. I've given you a copy of Exhibit 194, and is that  
17 a notebook that you put together?

18 A Yes, sir, it is.

19 Q All right. And is it a series of demonstratives where  
20 you lifted the signatures out of various documents that have  
21 been presented to the jury in this case?

22 A Yes, it is.

23 Q Okay. And if we'll, we're at 24, and what I'd like for  
24 you to do is just, I want to learn how you do your job. And  
25 we've got here four different exemplars, you see that?

1 A Five, but yes.

2 Q Okay, five. Now, let's make sure we know, and we won't  
3 do this with each one, but the first one is called K-9. Now,  
4 that means known 9, is that right?

5 A Yes, sir. When I did my examination I took these boxes  
6 full of known documents after I'd gone through them all, and  
7 known meaning that the signatures were not in question, the  
8 person admitted that they signed it, so I put those and I  
9 gave them numbers all starting with K for known. So I don't  
10 have them all depicted on these forms but you're looking at  
11 the first one there is K-9, that's one of them that I looked  
12 at.

13 Q And the jury will have another notebook that you prepared  
14 which is Exhibit 96 that will have all of these, it will have  
15 the questioned documents in it, and those go by Q-1 through  
16 5, is that right?

17 A Yes, sir.

18 Q And then it'll have, the jury will have the known  
19 documents which go, I think K-1 through K-30 or thereabouts,  
20 right?

21 A Yes, sir.

22 Q Okay. Now, can you, we'll just do this once or twice,  
23 can you go to 96.90, please? In fact you could do it in a  
24 split screen if possible. All right. So when the jury gets  
25 back there, 96.90, which is K-9, which is the driver's



1 license for Maria Trevino?

2 A That's correct.

3 Q Okay. Now, can we get the split screen up here to 24,  
4 194.24? All right. And so we see the driver's license and  
5 the signature is now carried over for this page here, right?

6 A Yes, sir, I did a high resolution scan and then  
7 transferred it to the other page.

8 Q Okay. Now, tell us, this isn't just a Xerox copy, this  
9 is more than that, is that right?

10 A No, sir, I want the best quality image possible so I scan  
11 it in at the best resolution scan that I can do and then I  
12 put that into a computer without having the computer do any  
13 manipulation of the data.

14 Q Okay. All right. Let's just go ahead and go, leave 24  
15 up there and, for example, and I'll just do this once or  
16 twice, K-12 is Exhibit 96.100, pull that up here, and go to  
17 page 103 and pull up Maria's now. All right. So I'm just  
18 trying to track, so the jury can track when they get back to  
19 the jury room with these notebooks where you're coming up  
20 with these signatures and if they're from known signatures  
21 that no one is arguing about, okay?

22 A That's correct.

23 Q All right. Now, let's just leave 24 up and the rest take  
24 off. Okay. Now, once you begin to gather your known  
25 signatures, what's the next step that you take?

1 A Well, to make it easy for me, since you saw these on  
2 different documents and sometimes they are very small and  
3 hard to see, I scan them in like we spoke of and I put them  
4 in my computer and then I bring them out and put them on  
5 pages like you see here. I am careful to try to make them  
6 all the same size, or approximately the same size, so that  
7 you're looking at apples to apples, if you will. So those,  
8 some of those have been enlarged, some of them have been made  
9 smaller, to try to make them appear to be the same size  
10 relationship on that document.

11 Q Let's put K-25 up here next to these. Which is 194.25,  
12 I'm sorry. Okay. I want to take you through what you taught  
13 me is your, the next step in your program is once you've got  
14 some of these exemplars you then begin to study them, and  
15 that's what we see in 25, we see a bunch of arrows and lines.  
16 Can you tell the jury what you're doing here as you're  
17 studying these documents?

18 A I'm drawing attention to different features in the  
19 writing. Now, these are the known documents, again. These  
20 are documents that were admitted to have been written by  
21 Ms. Trevino. And so, assuming she's telling the truth, this  
22 is the expanse of the way that she writes. So we go through  
23 them and look at her signatures and we look at how varied  
24 they are, how close they are or how much difference there are  
25 between them, and there you can start seeing some of the

1 things that I'm pointing out, different ways of making the  
2 characters and the letters, different heights, different  
3 beginning strokes. I've got arrows pointing to some. I've  
4 got straight lines where I'm talking about angles or how far  
5 something is off of the line, for instance. And I'm  
6 beginning to make notes, if you will, of my observations.

7 Q And that's what these blue arrows are, you're pointing  
8 out, you're doing your, this is your work product saying this  
9 is an interesting swirl at the end of the O, a little bit  
10 different on the K-12 versus what's on the K-9. You're  
11 beginning now to fill up your databank, is that correct?

12 A That's right, and that databank is based on how different  
13 this writing is from how we were taught in grade school to  
14 write. You know, how much difference is there in that  
15 capital M of Maria compared to how we were taught to write a  
16 capital M in block writing and cursive writing in school.

17 Q Okay. And this takes us through several of the  
18 documents. Let's pull up 194.27. All right. This is  
19 referring to known documents 10, 11 and 25, which the jury  
20 will see K-10 is a warranty deed dated April of '05, K-11 is  
21 a warranty deed, and K-25 are answers that Ms. Trevino signed  
22 to what's called interrogatories in this lawsuit.

23 A That's correct.

24 Q Okay. So let's just go back and just point out to the  
25 jury again the significance of the line going up from left to

1 right, headed northward on K-10. What are you showing us  
2 here?

3 A That blue line that's at the top going from the first  
4 capital M over the to the capital T of Trevino, what I'm  
5 showing there is a habit that this writer has, doesn't mean  
6 they always do it but it's a habit that they have where they  
7 start writing small and it gets bigger and bigger by the time  
8 they get to the capital T. You will see that habit quite  
9 often with this writer where the beginning word is low and  
10 then it gets bigger as it goes along. The capital M in Maria  
11 is smaller than the capital M in the middle initial and  
12 that's smaller than the capital T in Trevino. So that's what  
13 that line represents. The line to the left of Maria that  
14 goes vertical by the capital M is showing the height  
15 relationship of that letter. It's also showing that that  
16 letter goes down below the baseline. Now, the baseline is  
17 the line that's on the document that you are supposed to  
18 write your signature on. So one of her habits in this case  
19 is that she writes her capital M and part of that sometimes  
20 goes below the baseline. You'll see that that changes when  
21 she gets to the next letter, the A, that's on top of the  
22 baseline. And those are just some of the things that I'm  
23 pointing out. The arrow that's below the capital T in  
24 Trevino is pointing to the loop and how that letter is  
25 formed. And then there's another arrow above the V in

1 Trevino that's showing how that letter almost looks like a U  
2 as opposed to how we were taught to write a V.

3 Q All right. Let's go to 194, page 29. But before we  
4 leave there -- you've left there? That's fine. Here you've  
5 picked some more known writings. K-13 are some miscellaneous  
6 documents that have been produced in the litigation. I think  
7 K-15 -- okay, let's stop, roll back up K-14. You've kind of,  
8 here this, you know, what about this A here that's open at  
9 the top and swirling towards the initial M for her middle  
10 name?

11 A That is a habit that Maria sometimes has. Ms. Masson  
12 reported that she didn't see that broken A at the top, but if  
13 you look at that document, K-14, you see it, and if you look  
14 at, I believe K-13 has it. There's just a number of known  
15 documents that do have those features and if you look at  
16 enough of the known documents you will start to see them.

17 Q Okay. Let's call up 194.47. Okay. And 194.47, what do  
18 we have on that page?

19 A Well, now, that's different now. Now we're looking at a  
20 questioned signature. That's a signature that the sides on  
21 the case can't agree on. In this particular case our task  
22 was to determine whether or not that signature was in fact  
23 written by Maria Trevino or somebody else. So after I'm done  
24 examining all of the known signatures of Maria, I then have  
25 highlighted the features that I think are important on them.

1 Then I bring out the questioned document, in this case the  
2 builder and mechanic's lien document, and I'm looking at that  
3 signature now for the first time, and I'm looking to see does  
4 it have those features or does it have different features.  
5 If it does have those features, how many of them does it  
6 have, are the letters spaced the same way, is the slant the  
7 same way, how were these signatures formed, and do those  
8 signatures that are questioned fall within the range of  
9 variation of this writer. So you take everything she's  
10 admitted to and you say, okay, this is the range of variation  
11 of the writer, this is how she writes, does this questioned  
12 signature fall within that or is it outside of it. So when I  
13 start putting the blue arrows on the questioned signature  
14 like you have there, that indicates something that I found  
15 that is in agreement, it is consistent with something I found  
16 in her known writings. If it was different I would have it  
17 as a red marking. So blue means it's consistent, if it's got  
18 a red marking that's something that I found that's different  
19 that I have to then look to see if I can explain or not.

20 Q Okay. Let's bring up Q-2, please, on the same page.

21 Okay, here's the deed of trust, and you're showing the same  
22 angularity with the writing, the --

23 A I'm showing, I'm showing that it starts low with the  
24 capital M in Maria, it gets a little bit higher with the  
25 middle initial Maria, and then it gets higher with the T in

1 Trevino. That's the same characteristic that I showed in  
2 much of her known writings. If you go back to the beginning  
3 one, the Q-1 that you have there, you'll see I have the same  
4 line at the top showing the tendency to go from small to  
5 large, but then I have a number of arrows there, too, showing  
6 some of the other features such as the beginning stroke of  
7 that first M and the break between the I and A in Maria, and  
8 then the break between the T and the rest of the word in  
9 Trevino. Those were all consistent with what I found in her  
10 known writings.

11 Q Okay. Let's go to 194.49. And before we leave let's  
12 have a full view of this 194.47. Where it's got Q-1, Q-2,  
13 that's the builder's and mechanic's lien, the deed of trust  
14 and the property owner's agreement, and in each one of those  
15 you are pointing out to the jury some of the things that you  
16 have found in her known writings, is that right?

17 A That's correct. You look at the writing and you see if  
18 it has the features that are found in the known writings and  
19 that's what I have marked with the blue.

20 Q Okay. Now let's go to 194.49, please. These are the  
21 four signatures that you found of Maria Trevino on the real  
22 estate lease agreement, right?

23 A That's correct.

24 Q And this is one where you and Mrs. Masson basically  
25 agreed, is that correct?

1 THE WITNESS: Your Honor, may I pull out my sheet  
2 that has the agreements and disagreements between us two?

3 THE COURT: Anybody object?

4 MR. RUMLEY: Sorry?

5 THE COURT: Anybody object?

6 MR. RUMLEY: No, Judge.

7 THE COURT: I'm sorry?

8 MR. RUMLEY: I don't have any objection.

9 THE COURT: I can't hear you.

10 MR. RUMLEY: I don't have any objection.

11 THE COURT: Yes, sir.

12 THE WITNESS: Thank you, Your Honor. Your question  
13 about that again, please?

14 BY MR. LOCHRIDGE:

15 Q Yes. Did you and Mrs. Masson agree on Maria Trevino's  
16 signatures on the real estate lease agreement?

17 A Substantially yes, we were right in the same range, we  
18 were both right around an identification or a definitely did  
19 write.

20 Q All right. And you, your agreement, I mean your  
21 conclusion was definite and hers was highly probable, right  
22 next to definite, is that correct?

23 A I believe so, yes.

24 Q Okay. And again, you're pointing out in blue all the  
25 similarities that caused you to reach this conclusion, is



1 that correct?

2 A That's correct.

3 Q You've got the beginning of the M, the length of the T in  
4 Trevino, just pointing out the ones -- let's go to the next  
5 one, the next one. Could you tell us what you are pointing  
6 out there? This would be the third signature on the real  
7 estate lease.

8 A Yes. This is again a questioned signature on the real  
9 estate lease where the two sides are arguing about who wrote  
10 it, and the arrows there I'm showing are showing features in  
11 that writing that I found were consistent with writing that  
12 she admitted to writing, or it was known to have been written  
13 by her, such as the way that that capital M in Maria is made,  
14 the break in Trevino before the V in Trevino, and then the  
15 width of the ending stroke of Trevino. I found those to be  
16 consistent with some of her known writings.

17 Q All right. Let's go to 194.59. And let's put it up as a  
18 single exhibit, please. Now, what are you doing here in  
19 194.59?

20 A Well, there I put them on the same page, not only for me  
21 to be able to see it but to show the Court as well. I put  
22 the questioned signature at the top, in this case the  
23 questioned signature from the builder and mechanic's lien for  
24 Maria Trevino, and then below that I put a number of the  
25 known signatures, not all of them, but I put known signatures

1 that had these features that I was looking to see if it were  
2 in her writing. So in this case I've got four of the known  
3 signatures shown there. I could show you many more. I've  
4 got four on there because that's what fits on the page. And  
5 we can go through and look at the blue arrows on the  
6 questioned writing at the top and we can go down to at least  
7 one of those four signatures below it and find that that  
8 habit is within that person's writing style that's found  
9 within their known writing. There you're showing the  
10 questioned signature at the top and you're showing K-10 below  
11 that, or known writing 10, and if you look at the break in  
12 the capital -- or break in the lower case A of Maria, you'll  
13 see that in the second lower case A in Maria on the known  
14 document there's a break in that A, so it's within that  
15 writer's ability and habit to do that. To say that they  
16 don't close that A is incorrect. There's also an arrow at  
17 the end of Trevino where I'm showing the big loop at the end.  
18 That is also found in that questioned signature, a big loop  
19 at the end.

20 Q Let's go to the next known.

21 A There we have known document K-13 and I'm showing the  
22 break between the capital M in Maria and the A, it's not a  
23 continuous line, it breaks there. Well, it does the same  
24 thing in the questioned signature above it. And if you bring  
25 it down slightly you'll see there's a loop at the top of the

1 T in Trevino, it almost looks like a capital L, and you find  
2 that in the questioned signature there as well.

3 Q Okay. Let's go to the next, K-15.

4 A There we've got known document K-15 and in that case the  
5 V for Trevino almost looks like a U or, as Ms. Masson  
6 described it, as a C. You can't really make out the letters  
7 but you can certainly see that letter. And that is similar  
8 to what you're seeing up above it where the V in Trevino  
9 looks almost like a C or a U.

10 Q Let's go to K-25.

11 A There you're looking at the beginning of the capital M in  
12 Maria and how that stroke is made. It starts as like a  
13 little loop from below and then comes up. And it's very  
14 similar to what's found in that questioned signature.

15 Q All right. Now, as a result of your having reviewed all  
16 of her known signatures, not just some of them but all the  
17 ones that you had, against the questioned document builder's  
18 mechanic's lien contract, what opinion did you arrive at as  
19 to whether or not you thought that was an authentic signature  
20 of Ms. Trevino?

21 A I reached the highly probable opinion that she did write  
22 it. There were a couple of little things that I couldn't  
23 explain and so that's why I wasn't definite, but I said  
24 highly probable that she did write it.

25 Q And do you deal in percentages when you talk about that?

1 A They train us not to.

2 Q Okay. All right. Let's go to 194, page 61. This is the  
3 builder's -- this should be the deed of trust. All right.

4 Did you do the same analysis here?

5 A Yes, that's the deed of trust and I did that analysis the  
6 same way.

7 Q All right. You pointed out on the questioned signature  
8 in blue arrows items that you can find in the known  
9 signatures?

10 A Yes. There you are looking at the questioned deed of  
11 trust signature for Maria Trevino against the K-9 signature,  
12 which I believe was her driver's license. You'll see that  
13 she has a habit of sometimes dotting her I in Maria, and you  
14 see that in both cases.

15 Q Sometimes she does, sometimes she doesn't?

16 A Correct.

17 Q Let's go to the next exemplar, K-10.

18 A This is another way that she's signed her name in the  
19 past, and here you have a number of the same features that  
20 are found in the questioned writing. In the questioned  
21 writing on the deed of trust, the first A in Maria is closed  
22 at the top, the second A is not closed. You've got the same  
23 characteristic on K-10, first A is closed at the top, second  
24 A is not closed. And you've got the capital M, which is the  
25 middle initial for Maria, off of the baseline, it is up high

1 off of the baseline, much higher than the baseline is.

2 You've got that there as well. And then in the word Trevino

3 you have a break after the V, between that and the I, which

4 you also have in the questioned writing. You, at the end of

5 Trevino after the V, it's very difficult to see what letters

6 are there in this case. You can't make out an I, an N, and

7 an O. You have kind of like a series of U's or M's there.

8 And that is consistent with what you find up above it in the

9 questioned writing. And then the big loop at the end, you've

10 got that as well. You also have the other characteristics.

11 I'm not pointing them all out to you here but you have the

12 characteristic of starting low and going high between the

13 capital M of Maria, middle initial, and then the capital T in

14 Trevino.

15 Q Let's bring up K-11. Pointing out the loop at the top of

16 the T --

17 A Yes.

18 Q -- and comparing that to the loop in the top of the T of

19 Trevino on both handwritings?

20 A Correct, it almost looks like an L.

21 Q All right. And let's look at K-15 now.

22 A K-15 is showing how sometimes when she makes her letter V

23 for Trevino it looks like a C with that curve at the top, as

24 an example of one of her known documents where she is known

25 to be the author of where she does it that way.

1 Q Now, after having reviewed this, and again, you just  
2 didn't look at these, you looked at all the known signatures  
3 for Maria, did you come to an opinion one way or the other  
4 about the likelihood that Maria Trevino in fact signed the  
5 deed of trust?

6 A Yes, I said it's highly probable that she did sign the  
7 deed of trust, just like the builder's and mechanic's lien  
8 form, and that is an opinion that means I'm virtually  
9 certain. There's some feature in it that I wasn't able to  
10 answer. I couldn't find every feature but I found enough of  
11 them to make me feel virtually certain that it's the same  
12 writer.

13 Q Now, do you have any explanation for why you've got  
14 Mrs. Masson over here saying in this case definite and you  
15 over here saying virtually definite, virtually sure? How  
16 could you be so far apart?

17 A It's two reasons. First off, handwriting analysis is not  
18 an exact science. This isn't chemistry, this isn't DNA  
19 analysis. This is people that are trained to look at  
20 handwriting and decide if, of everybody in the world, is this  
21 the writer that wrote this document, and if you imagine doing  
22 that that's pretty difficult. There's a lot of people in  
23 this world. In the case we have here, we have a couple of  
24 things that differ between my examination and Ms. Masson's.  
25 I appear to have looked at a lot of known documents that were

1 written by these people and admitted to by them, either  
2 through course of business or by their own admission that  
3 they wrote, and I found the characteristics that I consider  
4 to be individual between these writings and the questioned  
5 writings, so I placed weight on that. She did not find those  
6 consistencies, she did not look at all the known writings,  
7 and then she placed a lot of importance on what she called  
8 slow and deliberate writing. Now, I'm trained that you're  
9 very careful in using the word deliberate. Deliberate kind  
10 of implies that somebody was deliberately trying to falsify  
11 this thing. I agree that there are elements of this  
12 signature that appear to be slowly written. I agree that  
13 there are elements of it that look like it has tremor or it  
14 has bumpiness in it. What I was trained to do is then figure  
15 out what caused that, is there an explanation that makes  
16 sense or do we jump all the way over to forgery. I don't  
17 jump to forgery because I see a lot of explanation here of  
18 possibilities. It could have been on a rough surface, it  
19 could have been that the person was standing up, it could  
20 have been that they were nervous, that they had caffeine that  
21 day, maybe they were a drug user, I don't know, but there are  
22 enough explanations that made me realize that that aspect of  
23 it wasn't as important as the numerous points of  
24 identification that are consistent. If I tried to duplicate  
25 somebody else's signature, unless I traced it, it wouldn't be

1 that close.

2 Q Now --

3 A And there's no evidence here of tracing.

4 Q She, I think, testified that she found that the documents  
5 were strikingly similar, or something along those lines, with  
6 some of the known writing, yet she still found contrary to  
7 what you did on the basis of the slow and deliberate. How  
8 can the slow and deliberate account for such close similarity  
9 in both of your minds between the two, the questioned and the  
10 known, account for a definite opinion that it can't possibly  
11 be Maria Trevino?

12 A In my opinion it can't, you can't go that far. Even if  
13 Ms. Masson thought that there was a lot of weight applied to  
14 the tremor or the slower what she called deliberate writing,  
15 to jump to the leap that no one in the world could have  
16 written this except somebody other than Maria Trevino I think  
17 is way too far.

18 Q Now, I want to go through some of the others but because  
19 of the hour I want to go through it in summary fashion, all  
20 right? I want to turn to Mr. Flores. And, first of all,  
21 before we get into them, did you go through the same rigorous  
22 protocol with his signatures as you did with Mrs. Trevino?

23 A Yes, I did.

24 Q And did you look at all of his known writings that you  
25 had and compare them to one another, find the variances and



1 then look for the similarities and the questions?

2 A Yes, I did.

3 Q All right. And these will be in the two exhibits for the  
4 jury to look at but I want to go to the conclusion page, and  
5 let's go to 194.41. These are Mr. Flores' signatures on the  
6 real estate lease, correct?

7 A Correct.

8 Q And you're pointing out all the similarities, and I'm not  
9 going to belabor this because as I recall you and Mrs. Masson  
10 both agreed that it was highly probable that in fact Cesar  
11 Flores did sign the real estate lease?

12 A That's correct.

13 Q And that's in your, you've done the comparison, double-  
14 checked that?

15 A That's correct.

16 Q Okay. And you heard her testimony to that effect, right?

17 A Yes, I did.

18 Q Okay. Let's go to 194.45. Okay. These are the powers  
19 of attorney, correct?

20 A That's correct.

21 Q And there were three of them, right?

22 A Yes.

23 Q All right. The first one has Cesar Flores' name, and I  
24 believe you came up with the conclusion that he definitely  
25 did sign the power of attorney that's part of Q-5?

1 A That's correct.

2 Q All right. Let's throw 96, let's have a split screen and  
3 put 96.033 to the left. Or to the right, here to the side.

4 Okay. So that's the power of attorney, that's 96, Exhibit  
5 96.33, and you came up with a definite conclusion that Cesar  
6 Flores, despite his testimony, in fact did sign that  
7 document?

8 A Correct.

9 Q And Mrs. Masson agreed with you, correct?

10 A Yes.

11 Q Okay. Now let's go to 90-, over to the side, 96.035, on  
12 the right-hand side. And this is another Cesar Flores on  
13 another power of attorney and I think you concluded that it  
14 was definite, is that correct?

15 A I believe that is the number three power of attorney and  
16 my conclusion was the same as Ms. Masson, which is highly  
17 probably that he did sign it.

18 Q Okay, highly probable. Okay. Now let's look at the  
19 96.034, the other power of attorney. Now, this is one where  
20 you concluded that it was highly probable that he did not  
21 sign it, correct?

22 A That's correct.

23 Q And are the red arrows pointing out the differences that  
24 led you to that?

25 A Yes. As I said before, the red arrows are places that I

1 found differences that couldn't be explained, could not be  
2 found in his known writing, so those unexplained differences  
3 had to be weighed.

4 Q Okay. Let's go to Alvin King. Again, we'll do this in  
5 summary fashion. But did you study Alvin King's signatures  
6 just like you had the others, looked at all of them and same  
7 methodology?

8 A Yes, I did.

9 Q All right. Let's go to 194, page 39. And then on the  
10 split screen 96, page 33. Okay. Let's look at this first  
11 one, Alvin King, and this is one where you've got some blue  
12 lines and some red lines.

13 A Yes, sir.

14 Q All right. And the blue points out the similarities and  
15 the red the things that do not appear to be there, correct?

16 A That's correct.

17 Q And you arrived at a decision of no conclusion, stuck in  
18 the middle?

19 A Right. There were just about an equal number of problems  
20 with the signature as there were things that seemed to match,  
21 so I just don't know.

22 Q Okay. Let's go back and look at 96.034. This has two  
23 signature of Alvin King, and you can see your analysis here  
24 in the documents, and did you agree with Mrs. Masson that  
25 definitely Alvin King signed that power of attorney in two

1 places?

2 A Yes.

3 Q Okay. And your opinion gibed with hers precisely that,  
4 despite his sworn testimony to the contrary, he in fact did  
5 definitely sign that power of attorney --

6 A That's correct.

7 Q -- in two places? Okay. Let's go, put 96.035 up on the  
8 screen, please. Now, your conclusion for this power of  
9 attorney that is at 96.035 I believe was highly probable that  
10 it is his signature, correct?

11 A That's correct, I'm virtually certain that it's his  
12 signature, as was Ms. Masson.

13 Q All right, so you-all's opinion lined up that, despite  
14 his sworn testimony, he did sign that agreement?

15 A That's correct.

16 Q All right. Let's go to Arturo Trevino. And I want to  
17 just go straight to the -- well, Arturo Trevino is  
18 interesting because he had a number of known signatures that  
19 Mrs. Masson did not look at, correct?

20 A That's correct.

21 Q Okay. Let's look at 194.31, please. This K-22 is a  
22 series of court records that she did not consider, and you're  
23 pointing out some of the aspects that you find there that in  
24 fact you found in the questioned signatures, isn't that  
25 correct?

1 A I believe I heard you say it incorrectly. Those are  
2 three that I did consider that Ms. Masson did not consider.

3 Q Right.

4 A And, yes, the blue marks do indicate things of  
5 consistency between those known signatures that were written  
6 on court documents compared to the questioned signature found  
7 on the builder and mechanic's lien and the deed of trust.

8 Q Okay. Let's look at the other known signatures that she  
9 did not consider. That's on those other same court records,  
10 and you're pointing out the angularity of the beginning A and  
11 the loop in the T of Trevino?

12 A Yes. If you look at the, how that beginning A angles and  
13 then you compare it against the K-11 up above, you see that  
14 sometimes this individual writes completely different than  
15 other times, sometimes to the right, sometimes to the left,  
16 it's all over the place, and so you have to consider that  
17 when you're looking at something that's in question to decide  
18 whether or not they wrote it. I'm showing there that he  
19 writes with two completely different slants.

20 Q Okay. Let's go to 194.53, which is the real estate lease  
21 that he denied having signed. Here we have the four  
22 signatures and you've pointed in the blue indications that he  
23 in fact did sign it, is that correct?

24 A That's correct.

25 Q And do you recall Mrs. Masson concluded that it was

1 highly probable that he did sign that real estate lease  
2 agreement?

3 A That's correct. She said highly probable that he did and  
4 I said that there are indications that he did.

5 Q You said indications. So you actually came out a little  
6 bit closer towards the middle on this particular one, is that  
7 correct?

8 A That's correct.

9 Q And can you tell us why?

10 A Well, you can see a number of places that do appear  
11 consistent but then you see some things that are slightly  
12 odd, and if you look at the page 7, the last one on the real  
13 estate lease there, if you look at the way Arturo just drops  
14 off at the end, you really can't make out any of the letters  
15 at the end of the word Arturo. Most of the time when he  
16 writes you can make out the letters. I'm not saying that's  
17 not him that wrote that, I'm just saying it's a little bit  
18 different than he normally writes. So it's something that I  
19 had to consider. You can go through a number of features  
20 like that and find subtle things that need to be considered  
21 before you decide did he or did he not write this, and in my  
22 opinion there are indications that he did write it, but I  
23 can't be totally positive.

24 Q Is it your view that it's more likely than, more probable  
25 than not that he did write, sign his name to the real estate

1 lease?

2 A Yes, it is more probable than not that he did.

3 Q Okay. Let's go to Exhibit 194, page 55. This is the  
4 builder's and mechanic's lien with his signature and several  
5 of the known signatures, and, again, the blue arrows point  
6 out the similarities?

7 A That's correct.

8 Q Okay. Okay. Let's go to the next one below K-17.  
9 There. You've pointed out the similarities in the A?

10 A Yes, it's similar to the way that we did the previous  
11 test on Maria. I have the questioned signature at the top  
12 which is the builder and mechanic's lien signature, and  
13 that's the one that they can't agree on whether he signed it  
14 or not, and then below that you've got a known document that  
15 he has admitted signing, or is known that he signed. And I'm  
16 showing there in the A that there's a, it's pretty wide as  
17 far as the, the way the A is made at the top. Ms. Masson  
18 described it as being vertical. And you see a lot of that  
19 there. He starts, he starts in the middle of the line for  
20 the capital A, goes down and then goes back up again to  
21 create the capital A, and he does that in both cases there.  
22 And then he's got a cross member for the A that starts over  
23 on the left side of the A, slightly angles down. It does  
24 that in both cases.

25 Q So your, what was your opinion as to the likelihood that

1 that is in fact Arturo Trevino's signature on the builder's  
2 and mechanic's lien?

3 A I said that there are indications that he did sign it.  
4 There are, in my opinion, more indications that he did sign  
5 it than the other direction, which was the direction  
6 Ms. Masson went in. I agree that he didn't cross his T, and  
7 I agree that it looks a little bit erratic the way he made  
8 Trevino there, but I found those features in his writing.  
9 The things that I could not address are where Ms. Masson was  
10 talking about the slow and deliberate. And, again, I have a  
11 problem using the word deliberate. I think it's more like  
12 slow and there's some kind of tremor, there's some kind of a  
13 problem with the writing. That problem could be induced by  
14 physical means such as writing on an uneven surface or a  
15 rough surface, or it could be by other means such as  
16 caffeine, drugs, something else, nervousness, something else.  
17 We weren't able to determine what happened here in this case,  
18 and so to me there are more indications than not that this  
19 person did write this signature.

20 Q So let me ask you, what is your view as to whether or not  
21 it is more likely than not that that is in fact Arturo  
22 Trevino's signature on the mechanic's lien contract?

23 A By using an opinion of indications that he did write it,  
24 that means that it's more likely than not that he did.

25 Q Now, let's go to the last exhibit, 194, page 57. This is



1 the deed of trust. And again, you followed the same  
2 methodology that you have all along, is that right?

3 A That is correct.

4 Q Okay. Let's look at, for example K-29, let's look at the  
5 T in Trevino there.

6 A It's actually pointing to the one above.

7 Q The one above, yeah, I'm sorry. K-20, yeah, that one.

8 A There I'm just showing that the bottom part of the T in  
9 Trevino is made in a similar way. It's got that big bowl at  
10 the bottom and it's kind of curved on the way up and straight  
11 on the way back.

12 Q Let's put up side-by-side 194.37.

13 A If I -- while you have K-29 there at your disposal that's  
14 one of the features that I did use for the, looking at the  
15 writing. If you look at the A in Arturo on K-29, you'll see  
16 that that kind of looks uneven and rough as well.

17 Q That's the lower one?

18 A No, the capital A.

19 Q That one there?

20 A No, the one above it, I'm sorry. I'm sorry, the K, the  
21 first one on K-29. There's two --

22 Q This one?

23 A No, no. Go down one. That one.

24 Q There we go.

25 A If you look at that A, on the right side of that capital

1 A, you'll see that it's all broken up there, it's a lot of  
2 tremor, a lot of roughness in that writing. Well, that's a  
3 known signature.

4 Q Okay. So, if you go back to the known signature you find  
5 the same kind of thing that one, that Mrs. Masson took to be  
6 slow and deliberate and therefore a problem?

7 A Correct.

8 Q All right. Now let's look at 37 down here in the bottom  
9 right-hand corner, and in particular I want to look at the R  
10 there. You see how the R is squared at the top?

11 A The first one in Arturo is squared at the top and the  
12 second one is pointed.

13 Q Okay. And let's look at the mechanic's lien, the  
14 questioned signature. Deed of trust, I'm sorry. It's got  
15 the same square-topped R, do you see that?

16 A It's got --

17 MR. B. GUTIERREZ: Objection, leading, Your Honor.

18 BY MR. LOCHRIDGE:

19 Q How do the R's compare --

20 THE COURT: Overruled.

21 THE WITNESS: The first R in the deed of trust is  
22 kind of squared at the top and the second one is pointed,  
23 similar to what you find in that known writing of his.

24 BY MR. LOCHRIDGE:

25 Q Now, in reviewing the various known signatures of Arturo

1 Trevino and comparing them against the signature on the deed  
2 of trust, do you recall what your opinion was as to whether  
3 or not it was more likely than not that Mr. Trevino in fact  
4 did sign that deed of trust?

5 A My opinion was that there are indications that he did  
6 sign it, and Ms. Masson said he definitely did not sign it.

7 Q Okay.

8 A In my opinion there are more indications that he did sign  
9 it than in the other direction.

10 Q All right. Now, did I ask you to review a demonstrative  
11 exhibit that I had prepared using the nine-point scale of  
12 handwriting and then placing on that exhibit indications of  
13 the various opinions that you have expressed here and  
14 Mrs. Masson has expressed here this afternoon as to the point  
15 on the scale that the two of you arrived at in looking at  
16 these various questioned documents, the powers of attorney,  
17 the real estate lease, the builder's and mechanic's lien and  
18 the deed of trust?

19 A Yes, I did review that.

20 Q And do you have a copy of it there with you?

21 A Yes, I do.

22 Q And is that an accurate depiction in a demonstrative way  
23 of where your respective opinions fall on the nine-point  
24 scale of handwriting opinions?

25 A Yes, it is.

1 MR. LOCHRIDGE: Your Honor, we would offer Clayton  
2 Exhibit 289.

3 MR. RUMLEY: Your Honor, we would object to this  
4 demonstrative exhibit to the extent it comments on testimony  
5 of the various witnesses in the case.

6 THE COURT: Sustained. Can you do it without the  
7 comments?

8 MR. RUMLEY: We have no objection to the nine-point  
9 scale, which I think is already entered, but --

10 MR. LOCHRIDGE: The only comment deals with what has  
11 been undisputed from the witness stand, is that the King,  
12 Flores and Trevinos deny all these signatures as being  
13 theirs.

14 MR. RUMLEY: Your Honor, that --

15 MR. LOCHRIDGE: That's the only, that's the only --

16 THE COURT: Okay, please --

17 MR. RUMLEY: That is not true.

18 THE COURT: -- if you can delete that. Thank you.

19 MR. LOCHRIDGE: Okay. We'll delete it overnight and  
20 tender it in the morning as Exhibit 289.

21 THE COURT: Thank you, sir.

22 BY MR. LOCHRIDGE:

23 Q Mrs. Masson, while testifying that the questioned  
24 signatures of Maria Trevino and Arturo Trevino were, at least  
25 as to Maria Trevino, remarkably similar, she said that there

1 was no evidence of tracing. Did you find any evidence of  
2 tracing?

3 A I looked for evidence of tracing and did not find that.  
4 And my recollection is a little bit different of what  
5 Ms. Masson said. In her deposition that I attended, I  
6 believe she indicated that there was a possibility of tracing  
7 and then today there's no possibility in tracing.

8 Q So you agree with her on that point as well, that there  
9 is no evidence of tracing of these documents, these  
10 questioned signatures on the deed of trust and the builder's  
11 and mechanic's lien?

12 A Correct. Tracing meaning that you hold a document up to  
13 a window and you put another piece of paper over it and you  
14 trace over it. There's no evidence of that.

15 Q Okay. Do you see any evidence of someone having a, what  
16 I would call a go-by, in trying to, I think she said  
17 simulate, did you see any evidence of that?

18 A I saw no evidence of that. I'm trained to look for that.  
19 If you have someone's writing sitting beside you and you're  
20 trying to duplicate it, then you'll be looking over at the  
21 left and you're writing with your right or whatever hand that  
22 you are, and many times the writing gets a little bit bigger,  
23 it gets a little bit odd looking, and you can see some of the  
24 slow and deliberate nature that Ms. Masson is talking about  
25 where you're trying to basically draw each of the characters.

1 I did not see that type of slow and deliberate. I saw tremor  
2 and unevenness in the writing, and I could actually show  
3 examples of that where the actual direction of the writing  
4 changes a little bit. That indicates to me more likely than  
5 not that you've got some kind of an uneven surface or uneven  
6 way that you're writing, that you're hitting some kind of an  
7 obstacle and it's causing a deflection in the writing.

8 Q And then finally, just to wrap up on the deed of trust,  
9 as to, and the builder's and mechanic's lien as to Maria  
10 Trevino, I see that your opinions are what?

11 A That Maria highly probably did sign the builder and  
12 mechanic's' lien and that she highly probably did sign the  
13 deed of trust. I'm virtually certain that she signed both of  
14 them.

15 Q All right. And as for Arturo, I think you testified that  
16 you believe that there were indications on each?

17 A There are indications that he did sign both of them, yes.

18 Q And if we could go to the Elmo? And so, as to these two  
19 sets of opinions on those two documents, you and Mrs. Masson  
20 are just basically at two ends of the spectrum?

21 A Yes, we are.

22 Q But as to the rest, virtually all of the rest of the  
23 opinions as to the lease agreement, the powers of attorney  
24 and so forth, your opinions line up almost exactly?

25 A That's correct.

1 Q Even on those where Mr. King and Mr. Flores and Mr. and  
2 Mrs. Trevino all denied having signed it or even seen the  
3 documents?

4 A That's correct.

5 Q You-all generally conclude that in fact they did.

6 A That's correct.

7 MR. LOCHRIDGE: Pass the witness.

8 THE COURT: Thank you. You may proceed, Mr. Rumley.

9 MR. RUMLEY: Thank you.

10 CROSS-EXAMINATION

11 BY MR. RUMLEY:

12 Q Good afternoon, Mr. Stewart.

13 A Good afternoon.

14 Q Real quick, I had a question -- I took your deposition,  
15 correct?

16 A Part of it, correct.

17 Q And during your deposition you understood that you were  
18 under oath, right?

19 A Yes, sir.

20 Q And just like you are here today, true?

21 A That's correct.

22 Q And when I took your deposition and I asked you about  
23 your opinions with respect to the signature of Arturo Trevino  
24 in the mechanic's lien contract and in the deed of trust, you  
25 indicated to me that there were indications that it was his

1 signature, correct?

2 A Arturo for the builder and mechanic's and deed of trust,  
3 I indicated that there are indications that he did sign it,  
4 correct.

5 Q All right. And this chart right here, this Exhibit 288,  
6 is this the chart that you put together?

7 A No, sir.

8 Q And do you agree with this chart?

9 A Yes, sir.

10 Q You agree that this is a nine-point scale of handwriting  
11 opinions?

12 A Yes, I do.

13 Q And this is the nine-point scale that you would have used  
14 when you were looking at the signatures on the documents,  
15 right?

16 A Well, we would use a scale, not this form that was  
17 created by the attorneys.

18 Q Well, is this form accurate?

19 A It was -- I produced a form that was similar to that and  
20 Ms. Masson suggested that it be changed and it was changed  
21 accordingly.

22 MR. RUMLEY: Objection, nonresponsive.

23 THE COURT: Would you listen carefully, sir, to the  
24 question and try to just answer the question.

25



1 BY MR. RUMLEY:

2 Q I'm just asking you, Mr. Stewart, is this nine-point  
3 scale, this 288 that Mr. Lochridge put together, is this  
4 accurate?

5 A Yes, it appears to be.

6 Q All right. And if we look, and I think, I think you just  
7 told the jury that rather than indications that it is  
8 Arturo's signature that it's now your opinion that it's more  
9 likely than not. Is that, did I hear that right?

10 A No, sir.

11 Q Okay. So it's not your testimony to this jury that on  
12 the deed of trust and the mechanic's lien contract that more  
13 likely than not Arturo signed those two documents, correct?  
14 Am I right?

15 A No, sir, you're not right. Any --

16 Q It's true, is it not, sir, that if we --

17 THE COURT: Don't interrupt his answers, please.

18 BY MR. RUMLEY:

19 Q If we look at this chart --

20 MR. LOCHRIDGE: May he be allowed to finish his  
21 answer?

22 THE COURT: He's probably forgotten the question,  
23 but yeah.

24 MR. LOCHRIDGE: Okay. Well, maybe the next one.

25

1 BY MR. RUMLEY:

2 Q Let me ask you, Mr. Stewart, you found indications with  
3 respect to Arturo Trevino, true?

4 A I found indications that he did sign the builder and  
5 mechanic's lien and the deed of trust, and --

6 Q Which is --

7 A -- indications means in our field that it's more likely  
8 than not that the person signed it.

9 MR. RUMLEY: Objection, nonresponsive.

10 THE COURT: Please listen just to the question and  
11 answer the question.

12 BY MR. RUMLEY:

13 Q Sir --

14 THE COURT: Do you want to ask it again?

15 MR. RUMLEY: Yes, ma'am.

16 BY MR. RUMLEY:

17 Q Sir, with respect to Arturo Trevino on the deed of trust  
18 and the mechanic's lien you found, it's your opinion that  
19 there's indications that he signed those two documents, true?

20 A That's true.

21 Q All right. And if we look, the next level of certainty  
22 is probable, true?

23 A That's correct.

24 Q All right. And you understand that probable is more  
25 likely than not, correct?

1 A That's another form of more likely than not, yes.

2 Q Right. And so if your testimony is is that indications  
3 is somehow more likely than not, then why didn't you just say  
4 that he probably did write it?

5 A Because if you look at the nine-point scale there are  
6 various delineations there. Indications did write is closer  
7 to not being able to tell, probably did write is closer  
8 towards an identification, and we have to go through and look  
9 at the evidence at hand and decide where it fits.

10 Q All right. So you did not, you did not find and it is  
11 not your opinion that Arturo Trevino probably did write the  
12 signatures on the deed of trust, true?

13 A That is not my opinion, no.

14 Q And it is not your opinion that Arturo Trevino probably  
15 did write the signature on the mechanic's lien contract,  
16 true?

17 A That's not where it falls on the scale, so true.

18 Q Okay. Now, one of the things that we went over or that  
19 you went over at the beginning of your testimony is your  
20 background. Do you recall that?

21 A Correct.

22 Q And a number of questions were asked about your  
23 experience in handwriting analysis. Do you recall those  
24 questions?

25 A Yes, sir.

1 Q You have given testimony in a number of depositions,  
2 correct?

3 A Yes.

4 Q And you have given testimony in a number of cases before  
5 courts, right?

6 A Approximately 300 times, yes.

7 Q And is it true, sir, that your opinion has been excluded  
8 before by a court?

9 A Not to my knowledge, no.

10 Q Is it true that you testified in a case in Florida this  
11 past year?

12 A Yes.

13 Q The Lake Forest case?

14 A Yes.

15 Q Is it your testimony that your testimony was not excluded  
16 by the court for being unreliable?

17 A Yes, it's my testimony. I've testified before that  
18 court.

19 Q Isn't it true, sir, that the court found your opinions in  
20 the Lake Forest case to be so inconclusive as to be useless  
21 under the Frye standard?

22 A I don't know what the ruling of the court was. I know  
23 that I testified in the case, I was not excluded from the  
24 case and I reached opinions on the case.

25 Q Are you aware that your opinions were excluded?

1 A As I just told you, I'm not, I do not, I'm not aware of  
2 that, no.

3 Q Have your opinions been excluded any other time?

4 A Not to my knowledge.

5 Q Now, you had mentioned --

6 MR. RUMLEY: Well, Your Honor, may we approach?

7 THE COURT: Yes, sir.

8 (Bench conference on the record)

9 MR. RUMLEY: Limine item, he brought up the Martha  
10 Stewart case. Larry Stewart --

11 THE COURT: The what?

12 MR. RUMLEY: Martha Stewart.

13 THE COURT: And what?

14 MR. RUMLEY: He was indicted for perjury for his  
15 testimony in the Martha Stewart case. He brought up the  
16 Germany testimony. There's a current investigation as to  
17 perjury charges that are pending. Both of those items are in  
18 his limine and so I'm --

19 THE COURT: Are those --

20 MR. LOCHRIDGE: No. Your Honor, he was, he was  
21 acquitted in the Martha Stewart case, totally collateral to  
22 his testimony here. I didn't get into any of it at all.

23 MR. RUMLEY: He asked him.

24 MR. LOCHRIDGE: And the deal in Germany is nothing  
25 more than allegation, he hasn't been convicted of anything.

1     There's a --

2             MR. RUMLEY: But there's a current investigation.

3             MR. LOCHRIDGE: There's a --

4             MR. RUMLEY: By the Germans.

5             MR. LOCHRIDGE: By the Germans.

6             THE COURT: By what?

7             MR. LOCHRIDGE: By the Germans. It's some kind of  
8     witch hunt over there.

9             MR. RUMLEY: He testified and --

10            THE COURT: I wondered about that, the whole article  
11     in the New York Times was about the Ivan the Terrible, what a  
12     mistake that was that he was misidentified. Okay, but if  
13     you -- what is it that you're doing?

14            MR. RUMLEY: In which he testified and now they're  
15     prosecuting him for perjury.

16            MR. LOCHRIDGE: He is, it's a -- well, no, I'm not  
17     going to use any adjectives -- a witch hunt over there that  
18     is a complete distraction here. Just nothing more than an  
19     allegation made by some crazy German. How can that come in  
20     here?

21            MR. RUMLEY: They filed a limine on it and then he  
22     went ahead and asked for the jury, "You were an expert in the  
23     Martha Stewart case?"

24            MR. LOCHRIDGE: No, I just said, "You were involved  
25     in it?" But either way, I didn't raise it, I didn't raise

1 that. To go off on that reservation would be extremely  
2 prejudicial to this man.

3 THE COURT: I think I would have left that out, sir,  
4 if you didn't want it to come in.

5 MR. LOCHRIDGE: But that didn't, that didn't open  
6 the door, Your Honor, it really didn't.

7 THE COURT: I'm afraid it did.

8 MR. LOCHRIDGE: So, I mean, an acquittal? He gets  
9 to say that he was indicted when he was acquitted? Is there  
10 anything -- I mean, in America when you're acquitted you're  
11 not, you don't win, you're found --

12 MR. RUMLEY: You're just found not guilty.

13 MR. LOCHRIDGE: You're found not guilty, yes.

14 MR. RUMLEY: A grand jury indicted him, the grand  
15 jury --

16 MR. LOCHRIDGE: How can that be, they come in here  
17 and impeach him when he stood up for his rights and was  
18 acquitted? I mean that's terrible.

19 MR. RUMLEY: I wasn't going to ask about it but he,  
20 I was shocked that he said that he was an expert in Martha  
21 Stewart.

22 THE COURT: I was, I didn't know that that was a  
23 problem.

24 MR. LOCHRIDGE: Well, I didn't, but I didn't  
25 (indiscernible) at all.

1 THE COURT: Well, you mentioned it, I mean all the  
2 big-time things that he was involved with.

3 MR. LOCHRIDGE: It may --

4 THE COURT: So I think it's fair to say, look, not  
5 about indictment but did you get into some trouble with the  
6 Martha Stewart case, ask him about that.

7 MR. LOCHRIDGE: Oh, no, just, just was your  
8 testimony challenged.

9 THE COURT: Thank you. No.

10 MR. LOCHRIDGE: That's it, that's it.

11 MR. RUMLEY: It's a perjury, it's lying under oath.

12 MR. LOCHRIDGE: But he was acquitted, for crying out  
13 loud.

14 MR. RUMLEY: Lying under oath is --

15 MR. LOCHRIDGE: It would be devastating to this man  
16 being struck like that.

17 THE COURT: Why?

18 MR. LOCHRIDGE: I mean you get falsely accused, you  
19 defend yourself, you get acquitted and then that follows you  
20 around the rest of your life?

21 THE COURT: Well, why bring it up?

22 MR. LOCHRIDGE: Well, if I opened the door I  
23 withdraw it, but I don't believe I --

24 THE COURT: It's too late.

25 MR. LOCHRIDGE: I don't believe I opened the door.



1 THE COURT: All those name brand things. The Ivan  
2 the Terrible thing.

3 MR. RUMLEY: I know.

4 THE COURT: You have to just look at that whole  
5 thing. I mean in this country he was determined to be not  
6 credible.

7 MR. LOCHRIDGE: Not that --

8 THE COURT: Which is why he was sent back to this  
9 country.

10 MR. LOCHRIDGE: No, no.

11 MR. RUMLEY: And there's a current investigation. I  
12 deposed him over it. I deposed him over it for three pages  
13 and they file a motion in limine and then he asks him about  
14 it.

15 MR. LOCHRIDGE: I didn't get into any detail at all  
16 about those.

17 MR. B. GUTIERREZ: And I believe they asked him  
18 about it, Your Honor, just to try to bolster his credentials.

19 THE COURT: That's the only reason he said that.

20 MR. B. GUTIERREZ: And now that, you know, they've  
21 opened the door --

22 THE COURT: You can ask him if he got into some  
23 difficulties during his testimony in the Martha Stewart case  
24 and in the Ivan the Terrible case. I'm surprised you brought  
25 that up, and I had just read about it.

1 MR. RUMLEY: Can I get in trouble with the court?  
2 Can I say he's in trouble with the court?

3 MR. LOCHRIDGE: No, because he didn't get in any  
4 trouble, he got acquitted.

5 MR. RUMLEY: Yes, he did. There's a pending  
6 investigation. Well, what do you want me to say, with the  
7 U.S. Attorney's office, with the prosecutor?

8 MR. LOCHRIDGE: No, no. That was completely off  
9 base. A man gets acquitted for something and then he's got  
10 an allegation in a witch hunt.

11 MR. B. GUTIERREZ: His qualification came into issue  
12 because of that.

13 MR. LOCHRIDGE: Qualifications are always at issue,  
14 but an acquittal is not, don't get into that.

15 THE COURT: Well, that's a pretty big deal.

16 MR. LOCHRIDGE: It is a pretty big deal.

17 THE COURT: I think you can say did you have a spot  
18 of trouble?

19 MR. RUMLEY: A spot of trouble?

20 THE COURT: Did you get in trouble due to your  
21 testimony in the Martha Stewart as well as the Ivan the  
22 Terrible thing.

23 MR. RUMLEY: I know. Okay.

24 (Bench conference ends)  
25

1 BY MR. RUMLEY:

2 Q Mr. Stewart, with respect to the testimony you gave in  
3 Florida, is today the first time you've heard from anyone  
4 that your testimony was excluded by a judge for being  
5 unreliable?

6 A Yes, and I'm --

7 Q This is the first time?

8 A And I'm not sure that, I'm not certain that you're  
9 correct.

10 Q Isn't it true, sir, that the lawyer for Clayton Homes had  
11 identified a number of cases that you were involved in, and a  
12 number of those cases were when you were with the Secret  
13 Service, right?

14 A Many of them were, yes.

15 Q Isn't it true that you testified in the Martha Stewart  
16 trial?

17 A Yes, I did.

18 Q And isn't it true that your testimony in the Martha  
19 Stewart trial got you in trouble, correct?

20 A No, I would not say that.

21 Q How about, you testified in the Ivan the Terrible case?

22 A Correct.

23 Q Did your testimony in the Ivan the Terrible case get you  
24 in trouble?

25 A I would not call it trouble. The one side of an, an

1 opposing side in the case argued before the court that he  
2 felt that I had not told the truth. The court then  
3 investigated that over about a four-month period and decided  
4 that he was not, that was not the case, that I had in fact  
5 told the truth.

6 Q Is there a current investigation ongoing in Germany over  
7 your testimony?

8 A No, the court has actually gone through that testimony,  
9 realized that I did tell the truth and issued a report  
10 accordingly.

11 Q Is there any other cases, depositions or situations,  
12 Mr. Stewart, where your testimony has been called into issue  
13 by a court?

14 A Not that I'm aware of, no.

15 Q Have you testified in Canada?

16 A On a number of occasions, yes.

17 Q Has there been an investigation in Canada over your  
18 testimony?

19 A Not that I'm aware of, no.

20 Q Has there been any other situation where your credibility  
21 has come into issue by a court?

22 A Well, you keep saying any other; I'm not even aware of  
23 what you're talking about.

24 MR. RUMLEY: Your Honor, can I show this just to the  
25 witness, witness first?

1 THE COURT: Yes. Wait. Okay.

2 MR. RUMLEY: The witness only.

3 THE COURT: Okay.

4 BY MR. RUMLEY:

5 Q Can you see that, Mr. Stewart?

6 A Yes.

7 Q Are you aware the Lake Forest Master Community

8 Association versus Orlando Lake Forest case?

9 A I have worked for the Lake Forest Master Community  
10 Association case, yes.

11 Q All right. And if we come down, do you see the  
12 highlighted part on this document?

13 A Yes.

14 Q And were you hired as an expert to establish that the  
15 page was not written on the date of the meeting?

16 A No, I was hired by one side of the case to decide whether  
17 or not the document was or was not. I was not hired to find  
18 one direction.

19 Q Do you see, sir, where -- do you understand what the Frye  
20 standard is?

21 A Yes.

22 Q Are you unaware, if you read this last sentence, are you  
23 unaware that the court found --

24 MR. LOCHRIDGE: Your Honor, I'm going to object,  
25 this is not in evidence and hasn't been shown to me.

1 MR. RUMLEY: I'm showing it to him.

2 MR. LOCHRIDGE: No, to me.

3 THE COURT: Show it to him, please.

4 BY MR. RUMLEY:

5 Q Do you understand, Mr. Stewart, that the other side filed  
6 a motion to exclude you as an expert?

7 A I assume they did. It happens in most cases where they  
8 try to exclude me as an expert.

9 Q All right. If you could read this highlighted part and  
10 see if this refreshes your memory as to whether or not the  
11 court excluded your opinions.

12 A Okay, I, from reading one sentence on there I have no  
13 idea if the court excluded an opinion. I was certainly  
14 allowed to testify in the case before the court and there was  
15 no argument while I was there in court concerning that. You  
16 are showing me one sentence without letting me read the  
17 entire document. I'd like to read before that and after it  
18 and then answer your question, if I may.

19 Q Sure.

20 THE COURT: You can give it to him. Ms. Scotch.

21 THE WITNESS: (Perusing document) Okay. I've read  
22 this and I disagree with your comments regarding it.

23 BY MR. RUMLEY:

24 Q Do you disagree with the fact that the court excluded  
25 your opinion?

1 A The court did not exclude my opinion. I testified before  
2 the court. You are reading a finding after hearing both  
3 sides, and if you read the entire document concerning that  
4 portion, they are specifically talking about a technique that  
5 was used to do chemical analysis on an ink and they're saying  
6 that that technique was not shown to have met the Frye rule  
7 standard. So that, that is the court ruling about a  
8 technique that was used and then deciding not to use it.

9 Q And the court, the court excluded the testimony, correct?

10 A No, I testified in front of that court.

11 Q Correct, but this says, "The testimony is so inconclusive  
12 as to be useless." Did I read that right?

13 A It doesn't say it's excluded.

14 Q Mr. Stewart, the -- is there any other -- you have  
15 testified in Canada, correct?

16 A As I said before, numerous times, yes.

17 Q All right. But you are unaware of any, any type of  
18 investigation occurring in Canada, true?

19 A I'm aware of a number of investigations in Canada, none  
20 concerning me.

21 Q All right. I want to go to a couple of things. The  
22 American Academy of Forensic Sciences, are you a member of  
23 that organization?

24 A Yes, I'm a fellow of that organization.

25 Q And it's true, is it not, that you are not in the

1 questioned document section, correct?

2 A I never applied to be in the questioned document section,  
3 correct.

4 MR. RUMLEY: Objection, nonresponsive, Your Honor.

5 THE COURT: Listen carefully to the question and  
6 just answer the question, please, sir.

7 THE WITNESS: Yes, Your Honor. I'm trying to  
8 answer. I am not in that section.

9 BY MR. RUMLEY:

10 Q You are not in the questioned document section, true?

11 A That's correct.

12 Q You are in the criminalistics section, correct?

13 A That's correct.

14 Q The American Board of Forensic Document Examiners, are  
15 you board certified, that organization?

16 A I am not a member of that organization, no.

17 Q But you were for years, correct?

18 A No, I've never been in the American Board of Forensic  
19 Document Examiners.

20 Q And you have -- have you ever applied to be in that  
21 organization?

22 A No, I have not.

23 Q The American College of Forensic Examiners, you talked  
24 about that earlier, do you recall that?

25 A Yes, I did.



1 Q This organization has gone through some, have gotten a  
2 bad rap, do you agree, in the past?

3 A I'm trying to answer your question responsively. I know  
4 that you have suggested a bad rap as a result of your  
5 questions to me in deposition. I contacted the organization  
6 and received a response from them that indicates otherwise.  
7 I was unaware of any bad rap of that organization.

8 Q Are you familiar with the various articles that are out  
9 about that organization?

10 A You showed me some at the deposition.

11 Q It's true, is it not, that in order for you to be a  
12 member of that organization you just apply, correct?

13 A No, sir. What you showed me and, at the deposition, were  
14 people writing about the organization saying in the early  
15 years that was a practice. It's my understanding and based  
16 on what I went through, that certainly isn't the practice  
17 now. I went through not only a lengthy process but actually  
18 had to be tested before I could become a member.

19 Q Do you have to take a test to get in?

20 A You don't have to. I chose to and I became certified by  
21 them.

22 Q But you can self-score yourself to get into that  
23 organization, true?

24 A No, sir. I had to have a university do a scoring of the  
25 test, and I did not even see the test once I took it until I

1 got the result.

2 Q Sir, can you self-score yourself on the points?

3 THE COURT: Can you what?

4 BY MR. RUMLEY:

5 Q Self-score yourself to get in, yes or no?

6 A As far as I know, no. I certainly couldn't.

7 Q With respect to yourself, you agree with me that you  
8 advertise quite a bit, correct?

9 A Yes.

10 Q Lawyer Magazine, Expert Pages, correct?

11 A I am not aware of Lawyer Magazine. I do advertise with  
12 Expert Pages.

13 Q Do you remember running ads in the Lawyer Magazines?

14 A No, sir, I don't recall that.

15 Q Do you remember what you told me at your deposition?

16 A Regarding Lawyer Magazine?

17 Q Yes. The question was asked, "The last four years do you  
18 recall running ads in ABA Journals, California Legal  
19 Journals?" What was your answer?

20 A I don't recall, but I don't recall ever advertising with  
21 those groups, no.

22 Q Well, do you recall advertising in any of those journals?

23 A I advertise, or I have given talks in local lawyer groups  
24 in my area and I believe that they have indicated that in  
25 their journals, but I don't recall ever advertising in their

1 journals.

2 Q Now, one of the things in this case, it's true, is it  
3 not, that Clayton Homes contacted a service that has experts  
4 and that's how you were hired in this case, correct?

5 A That's correct.

6 Q It's a deal where lawyers call and they put experts in  
7 contact with the lawyers, true?

8 A Almost. It's a deal where the organization goes through  
9 and decides whether or not they want to represent an expert,  
10 and they do that based on that expert's ability, background,  
11 et cetera.

12 Q And these expert services go out and they advertise you  
13 as an expert, correct?

14 A I don't know what their procedure is. They ask  
15 permission to advertise you and then I gave them that  
16 permission.

17 Q One of the things I think at the very beginning is, I  
18 think the testimony is, is that you have somewhere over 100  
19 hours in this case?

20 A I would say at least.

21 Q It's a lot more than 100, true?

22 A I don't believe it's a lot more. It's averaged  
23 approximately a week and a half a month for six months.

24 Q Well, if we look at Exhibit 326 that's in evidence, if we  
25 go -- Mr. Stewart, this is the first bill for July, do you

1 see that?

2 A Yes, sir.

3 Q And 26 hours, correct?

4 A Yes. It's a little blurry, but yes.

5 Q If we go to the next invoice for August, we have 112,

6 112-1/2, correct?

7 A Okay, so as of August it was over a hundred, yes.

8 Q All right. And then if we go to September, how many

9 hours?

10 A That's 160 hours.

11 Q Right. So as of September how many hours do you have in

12 it?

13 A I --

14 Q Twenty plus 112 plus 160. How many is that?

15 A I don't know, you're flipping through it, so whatever

16 that adds up to. Those are not my bills, those are bills

17 from Gerson Lehrman on my behalf, they are not charging my

18 rate and it does not subtract travel and expenses, which has

19 been a predominant part of this case.

20 MR. RUMLEY: Objection, nonresponsive.

21 THE COURT: Would you please answer the question,

22 please, sir.

23 THE WITNESS: I'm trying, Your Honor.

24 BY MR. RUMLEY:

25 Q If we look in October, how many hours did you have in

1 October?

2 A Twenty point 5-0.

3 Q And the October, the October bill is just for your time  
4 in September, correct?

5 A I don't have the Gerson Lehrman bill in front of me. I  
6 invoice them and then they invoice the client, so I don't  
7 know.

8 Q Well, how many hours did you spend in October working on  
9 this case?

10 A I have no idea today. You have the records.

11 Q Well, there's no time in here for October. That would be  
12 a November bill, I assume?

13 A I bill Gerson Lehrman at the end of the month for the  
14 previous month.

15 Q All right. Well, how much time have you spent in  
16 October --

17 A I have no --

18 Q -- on this case?

19 A I have no idea. But I went back and I checked prior to  
20 the deposition, I averaged it out to be approximately a week  
21 and a half a month for the six months, that's what I  
22 testified to.

23 Q Okay, so how many hours would that be in October?

24 A I don't know how many hours I did in October.

25 Q How about in November?

1 A I don't know what I've done in November. This is the  
2 middle of the month, so I know it took me ten hours to travel  
3 here and then I've been here all day, so that's 18 right  
4 there.

5 Q Would it surprise you, sir, if your bill is over  
6 \$125,000 --

7 A It wouldn't --

8 Q -- for your work?

9 A It wouldn't surprise me if Gerson Lehrman's bill was that  
10 much. Again, I charge at a lower rate, and it does not take  
11 out travel and expenses which are quite extensive. I've done  
12 a large number of hours in this case.

13 MR. RUMLEY: Objection, nonresponsive, Your Honor.  
14 I just asked him if he'd be surprised if it was over 125.

15 THE COURT: Would you please respond?

16 THE WITNESS: Yes, Your Honor.

17 BY MR. RUMLEY:

18 Q Sir, Clayton Homes pays this expert service for your  
19 time, is that how it works?

20 A I believe so.

21 Q And it would not surprise you if that bill is well over  
22 \$125,000 by now, true?

23 A It surprises -- it would surprise me. I don't know what  
24 the bill is at this point.

25 Q If we look at, going back to your work history, you agree

1 with me that when you were at the Secret Service that you  
2 never analyzed handwriting for the Secret Service, correct?  
3 Is that true?

4 A I'm having a difficult time answering that one and  
5 staying within your question. I have analyzed handwriting  
6 for the Secret Service. I have never issued a report for  
7 them on handwriting analysis.

8 Q Well, my question was very simple. Did you, it is true  
9 that you never analyzed handwriting for the Secret Service,  
10 correct?

11 A No, that's not true.

12 Q Well, if we look at your deposition, Mr. Stewart,  
13 "Question: You didn't analyze handwriting, correct?"

14 MR. LOCHRIDGE: What page?

15 BY MR. RUMLEY:

16 Q What was your answer?

17 A Well, it says, "I thought your question was, was I  
18 trained to analyze handwriting there and certify, and my  
19 answer to that are yes. Did I analyze it professionally for  
20 the agency? No, I did not."

21 Q And that's a true statement, right? You did not analyze  
22 handwriting for the agency, correct?

23 A That's why I'm having a difficult time answering your  
24 question. If you want me to explain I can answer.

25 Q No, sir, I want you to answer my question.

1 A I can't based on the way you've posed the question.

2 Q Did you analyze handwriting for the agency, yes or no?

3 A I can't answer it with that limited question.

4 Q Sir, I'm just asking you, did you professionally analyze  
5 handwriting for the Secret Service when you were there, yes  
6 or no?

7 A I can't answer yes or no. If I can --

8 THE COURT: Why is that?

9 THE WITNESS: Because I did analyze it for the  
10 agency. I did not issue --

11 THE COURT: Well, that's a yes, so just answer yes.

12 THE WITNESS: Okay.

13 BY MR. RUMLEY:

14 Q And then if we read the next question, "That's something  
15 that you didn't do at the agency, correct?" And what was  
16 your answer?

17 A "At the time at the agency, no, I did not, I supervised  
18 those" -- you took it away, I can't read it. "I supervised  
19 both of those two gentlemen."

20 MR. LOCHRIDGE: What page are you on?

21 THE WITNESS: Again, if I can explain it would make  
22 more sense, but.

23 MR. LOCHRIDGE: What page are you on?

24 MR. RUMLEY: Page 95.

25



1 BY MR. RUMLEY:

2 Q So is it true or not true, sir, did you analyze  
3 handwriting for the agency?

4 A Again, I can't, I have to answer that with a statement.  
5 I did analyze handwriting for the agency but I never issued a  
6 report on that.

7 Q Is it true that you had individuals within handwriting  
8 within the agency that did the handwriting analysis?

9 A Under my direction, yes.

10 Q When we talked about the signatures that you looked at in  
11 this case -- and by the way, I think you told us earlier that  
12 you looked at a lot more signatures or many more signatures  
13 than Masson. Is that what your testimony is?

14 A I believe so, yes.

15 Q With respect to Maria Trevino, isn't it true that you  
16 looked at two signatures, two more signatures than Masson?

17 A I don't have the number in front of me, so I don't know.

18 Q Well, does that sound about right, two, two more?

19 A Again, I don't want to guess. I don't know.

20 Q It would be inappropriate for you as someone who comes in  
21 here as an expert to hunt and pick known signatures for  
22 something just to support your opinion that that is a known  
23 signature, correct?

24 A Of course.

25 Q All right.

1 THE COURT: Are you near a closing place so we can  
2 start, pick this up tomorrow morning?

3 MR. RUMLEY: Okay. I was just getting ready to do  
4 an exhibit so now's the time.

5 THE COURT: It's a good time?

6 MR. RUMLEY: Yes.

7 THE COURT: Okay. We'll come back tomorrow at 8:30.  
8 Or would you-all rather make it 9:00 tomorrow? 8:30. Would  
9 you please stand for the jury.

10 (Jury exits at 5:34 p.m.)

11 THE COURT: Anything to take up outside the presence  
12 of the jury? Okay. Here's what I was talking about on Ivan  
13 the Terrible. It's highlighted. I just printed it out from  
14 the New York Times. It was two days ago.

15 MR. J. GUTIERREZ: And it was in the paper about  
16 all --

17 THE COURT: Pardon?

18 MR. J. GUTIERREZ: That was just in the paper about  
19 a military division --

20 THE COURT: Two days ago, yeah, about the Nazi war  
21 criminals that were given safe haven in the United States.

22 MR. J. GUTIERREZ: If I may address the Court?

23 THE COURT: Yes.

24 MR. J. GUTIERREZ: In terms of -- well, there's  
25 Mr. Soltero. What is our schedule?

1 THE COURT: It's just the highlighted part,  
2 Mr. Lochridge.

3 MR. J. GUTIERRIEZ: What is the Court's preferred  
4 schedule for discussing the jury charge after the close of  
5 evidence tomorrow, before closing arguments or during lunch  
6 tomorrow?

7 MR. SOLTERO: Your Honor, we can be off the record.

8 THE COURT: Is this the last witness? One more?

9 MR. RANGEL: One more video deposition, and I'm sure  
10 counsel are going to work tonight to see if it can be  
11 shortened.

12 MR. SLEDGE: Right, Judge. I think we are totally  
13 at about two hours and 15 minutes with that videotape and  
14 we're going to try to keep trimming it a little bit.

15 MR. RUMLEY: The what now?

16 MR. SLEDGE: Kimball's videotaped deposition.

17 THE COURT: Well, the other concern also, that I may  
18 have to call the U.S Attorney about this witness. I mean  
19 when you asked me if he had been, gotten in any trouble at  
20 all for the Martha Stewart testimony and it turns out he was  
21 indicted for perjury even though he was acquitted, I would  
22 consider that some trouble.

23 THE WITNESS: I don't believe that was the question.

24 THE COURT: Yes, it was, very clearly.

25 THE WITNESS: Okay. I'd personally like to have

1 that re-read, but.

2 THE COURT: Pardon?

3 THE WITNESS: I personally would like to have that  
4 re-read because that's not what I heard the question to be.

5 MR. LOCHRIDGE: We can worry about this in the  
6 morning, Your Honor.

7 THE COURT: We can. Did you get a copy of that?

8 MR. J. GUTIERRIEZ: I'll share a copy with him.

9 THE COURT: Do you have it?

10 MR. J. GUTIERRIEZ: I read the article, that's fine.

11 THE COURT: But I don't know if he was part of the  
12 Justice Department that mistakenly misidentified Ivan the  
13 Terrible. Because that was in the United States, that's why  
14 he was deported to Germany. They had nothing to do with  
15 what's going on in Germany now.

16 MR. J. GUTIERRIEZ: Right, now it's somebody else.

17 THE COURT: That's a different crime altogether he's  
18 been charged with in Germany. The Ivan the Terrible  
19 misidentification occurred with the Justice Department in  
20 this country.

21 MR. J. GUTIERREZ: Yes.

22 THE COURT: So I mention that because that was very  
23 unclear. No, you can give it to --

24 MR. J. GUTIERRIEZ: Ivan the Terrible was a  
25 misnomer, basically, for that person.

1 THE COURT: He was misidentified as Ivan the  
2 Terrible but it turns out he was a guard someplace else.

3 MR. RUMLEY: Did we figure out the schedule for  
4 tomorrow?

5 THE COURT: 8:30. And when that's concluded, try to  
6 chop down as much as you can, we'll have a charge conference.  
7 What I have asked Mr. Feldman and Ms. Hardy to do was to put  
8 together -- we're off the record.

9 (The proceedings adjourned at 5:37 p.m. until 11-16-10)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## INDEX

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
WITNESSES				
FOR DEFENDANTS:				
Amber Krupacs	15			
(By video deposition)				
Myron Glucksman	44			
(By deposition)				
Cesar Flores	76	81	94	94
Alvin King	94	96	99	101
WITNESSES				
FOR PLAINTIFFS:				
Amber Krupacs	35			
(By video deposition)				
Myron Glucksman	61			
(By deposition)				
Larry Stewart	229	279		
IN REBUTTAL:				
Kim Russell	109	118	121	
WITNESSES				
FOR INTERVENOR:				
Arturo Trevino	123	126		
Janet Masson	131	162	206	216
MOTIONS:				
Mr. Soltero	102	Denied		102
Mr. Soltero	103	Carried forward		
Mr. Soltero	105	Carried forward		
Mr. Soltero	122	Carried forward		
Mr. Soltero	222	Carried forward		
Mr. Rumley	227	Carried forward		

(Continued on next page)

## INDEX (Continued)

## EXHIBITS

	<u>Admitted</u>
Defendant's:	
95 Christie Medina Deed of Trust	73
96 Christie Medina Builder's & Mechanic's Lien	73
97 Form Power of Attorney in Medina matter	73
98 Hernandez Deed of Trust	73
99 Hernandez Builder's & Mechanic's Lien	73
102 Statement of Home Location, Form A	73
114 Frazier Personal File, Clayton Homes	74
225 TDHCA Manufactured Housing Form A	73
226 William & Olinda Medina Arbitration Agreement	73
227 Standard Appraisal Form Re: William Medina	73
230 Hernandez Cost of Sales Summary	73
231 TDHCA Manufactured Housing Form T	73
232 E. Herrera Deed of Trust 12/27/02	73
233 E. Herrera Builder's & Mechanic's Lien Contract	73
234 Notary Public Commissions, Bruce R. Moore	73
466 Arbitration Agreement-Cesar Flores & Alvin King	75
487 Laminated signature - Maria Trevino (8)	12
488 Laminated signature - Maria Trevino (2)	12
489 Laminated signature - Arturo Trevino (7)	12
490 Laminated signature - Arturo Trevino (2)	12
491 Masson CV	11
687 Masson Letter dated August 18, 2010	161
Plaintiff's:	
4 1/2/02 Original of Real Estate Lease	10
5 1/5/02 Three Originals of Power of Attorney	10
42 7/24/03 Special Warranty Deed	10
96 Expert Report of Larry Stewart	11
139 4/11/05 Warranty Deed	10
140 Powers of Attorney	10
141 1/3/02 Flores & King's faxed credit app.	10
143 1/6/02 Property Owners Agreement	10
169 Trevino Property Owners Agreement	10
176 Real Estate Lease	10
241 Janet Masson Invoices	10
242 9 Point Scale Revised	10
287 CV of Larry Stewart	12
288 9 Point Scale of Handwriting Opinions	244

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above entitled matter.

/s/ Judith M. Garcia

February 10, 2011